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ABSTRACT

Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) provides financial assistance to state (SEAs) and local educational agencies (LEAs) to meet special educational needs under the same formula that governed the allocation of Title I funds. The guidance in this document only pertains to the Chapter 1 program that provides financial assistance to LEAs for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children, and is addressed primarily to SEAs to assist them in administering their LEAs' Chapter 1 programs. Among the topics covered are the following: LEA project application; allocation of funds; selection of attendance areas; student identification and selection; consultation with parents and teachers; comparability of services; schoolwide projects; LEA evaluation; and participation by children in private schools. Within each section are references to the applicable statutory and regulatory requirements followed by a discussion. The appendixes comprise over half of the document and provide, in detail, the statutory and regulatory requirements. (MLF)

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Nonregulatory Guidance to Assist
State Ed Agencies in Administer

ED323588

NONREGULATORY GUIDANCE

To Assist State Educational Agencies in
Administering Federal Financial

ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

For Projects Designed to Meet The Special Educational
Needs of Educationally Deprived Children Under

CHAPTER 1 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981, AS AMENDED

U.S. DEPARTMENT OF EDUCATION

DECEMBER 1986

EA 021 824

U.S. DEPARTMENT OF EDUCATION
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PREFACE

Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (Chapter 1) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35). Chapter 1 superseded Title I of the Elementary and Secondary Education Act of 1965 (Title I).

Chapter 1 provides financial assistance to State and local educational agencies to meet special educational needs under the same formula that governed the allocation of Title I funds. Specifically, the programs authorized by Chapter 1 provide financial assistance to—

- Local educational agencies (LEAs) for projects designed to meet the special educational needs of educationally deprived children from low-income areas and children in local institutions for neglected or delinquent children;

- State agencies for projects designed to meet the special educational needs of handicapped children;

- State agencies for projects designed to meet the special educational needs of children in State institutions for neglected or delinquent children or in adult correctional institutions;

- State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers;

- SEAs for projects designed to improve the interstate and intrastate coordination of educational programs available for migratory children; and

- The Secretary of the Interior to meet the special educational needs of Indian children.

The Department published final regulations in 47 FR 52340 (Nov. 19, 1982) as 34 CFR Part 200 implementing that part of Chapter 1 that provides financial assistance to LEAs to meet the special educational needs of educationally deprived children. Subsequently, Congress enacted the ECIA Technical Amendments (Public Law 98-211), which amended the Chapter 1 statute and necessitated certain changes to the regulations in Part 200. Accordingly, the Department published final regulations for Part 200 in 51 FR 18404 (May 19, 1986) implementing those changes. The Department also published final regulations in 50 FR 18415 (Apr. 30, 1985) and 51 FR 18412 (May 19, 1986) as 34 CFR Part 204 containing general definitions and administrative, project, fiscal, and due process requirements for all Chapter 1 programs. The provisions in Part 204 replaced a number of provisions previously in Part 200.

Originally, the Department issued nonregulatory guidance (NRG) for the Chapter 1 LEA program in June 1983. That guidance has been updated in this document to reflect, in part, the changes in the Chapter 1 statute made by the technical amendments and the changes in Part 200 of the Chapter 1 regulations. The Department soon will issue the NRG concerning the provisions contained in Part 204. That guidance should be used in concert with this document.

The guidance in this document only pertains to the Chapter 1 program that provides financial assistance to LEAs for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children. This guidance does not apply to the other Chapter 1 programs, even though those programs may, in part, be operated by LEAs.

Since SEAs have the responsibility for reviewing and approving LEA applications for Chapter 1 funds, the guidance in this document is addressed primarily to SEAs to assist them in administering their LEAs' Chapter 1 programs. LEAs may rely on this guidance unless it is inconsistent with guidance provided by the SEA. While SEAs may wish to consider the guidance in this document in developing their own guidelines and standards, they are free to develop alternative approaches that are consistent with the Chapter 1 statute and regulations but may be more in keeping with particular needs and circumstances. However, compliance with the guidance in this document shall be deemed compliance with the statute and regulations by Department of Education officials, including the Inspector General. In other words, this document contains acceptable, but not exclusive, guidance concerning Chapter 1 requirements.

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SECTION 1

PURPOSE OF CHAPTER 1 PROGRAM FOR LEAS

Statutory Requirement

Section 552 of Chapter 1.

Regulatory Requirement

Section 200.1 of the regulations.

* * * * *

SECTION 2

DEFINITIONS

Definitions that apply only to the Chapter 1 program for LEAs are contained in §200.3(b) of the regulations. That section defines the following terms:

attendance area
Chapter 1
children
educationally deprived children
fiscal year
institution for delinquent children
institution for neglected children
preschool children
private
project area
public
Title I

For definitions that apply to all Chapter 1 programs, see §204.2 of the regulations. For acronyms frequently used in Chapter 1, see §204.3 of the regulations.

The definitions in 34 CFR Part 77 (definitions in the Education Department General Administrative Regulations (EDGAR) that apply generally to education programs) do not apply to the Chapter 1 program for LEAs. (See §200.3(e) of the regulations.)

* * * * *

SECTION 3

LEA PROJECT APPLICATIONS

Statutory Requirement

Section 556 of Chapter 1.

Section 436 of the General Education Provisions Act (GEPA).

Regulatory Requirement

Sections 200.12-200.14 of the regulations.

Discussion

Section 556(a) of Chapter 1 provides that an LEA may receive a grant under Chapter 1 for any fiscal year for which it has on file with the SEA an application that meets the requirements of §200.13 of the regulations and has been approved by the SEA. The application must include:

- a description of the Chapter 1 project to be conducted with grant funds for a period of not more than three fiscal years;
- information sufficient to determine that the assurances required in Section 556(b) of Chapter 1 are met; and
- the assurances required by Section 436(b)(2) and (b)(3) of GEPA regarding fiscal control and fund accounting procedures. The assurances required in GEPA need to be on file in the SEA. The SEA may have the LEA file these assurances one time and keep them on file indefinitely.

The contents of the application must be sufficient to enable the SEA to determine that Chapter 1 requirements are being met.

Section 200.13(c) of the regulations requires an LEA to update annually certain aspects of its application to the SEA. Section 200.13(d) of the regulations requires further updating of information whenever there have been substantial changes in the number or needs of the children to be served or the services to be provided.

In connection with its role in approving an LEA's application, the SEA may require the LEA to provide additional information that the SEA needs in order to carry out its responsibilities under Chapter 1. An SEA's approval of an LEA's application extends only to the project described in that application. While each SEA has the discretion to prescribe the format for LEA applications, and to determine what specific information LEAs must present as part of their applications, the SEA may not use the application process to impose requirements that are inconsistent with the requirements under Chapter 1 or other applicable Federal statutes and regulations.

* * * * *

SECTION 4

ALLOCATION OF FUNDS

Statutory Requirement

Section 554(a) and (b) of Chapter 1.

Regulatory Requirement

Sections 200.20-200.46 of the regulations.

Discussion

Grants for LEAs under Chapter 1 will be determined on the same basis as they were determined under Title I. The following is a summary of the allocation process:

1. Basic Grants

   From the annual appropriation of Chapter 1 funds, the Secretary determines, in accordance with §200.21(b), (c), and (d) of the regulations, the basic Chapter 1 allocation for each county.

   The SEA is responsible for suballocating the basic county allocation among the eligible LEAs in the county. Eligibility of LEAs to receive Chapter 1 funds is described in §200.20 of the regulations. Although an LEA may be eligible, §200.22(b)(3) provides that an SEA is not required to allocate to an LEA a basic grant generated by fewer than 10 children.

   In accordance with the procedures in §200.22, the amount of each LEA's proportionate share of the county allocation is determined by the SEA on the basis of the number of children in local institutions for neglected or delinquent children and the number of children from low-income families. The SEA is not required to use census data on the number of children from low-income families as is required by the statutory allocation formula. The flexibility permitted States by §200.22(b) to make subcounty allocations on the basis of the best available data on the number of children from low-income families provides an opportunity to use data more current or accurate than the census counts.

   Section 200.22(b)(2) of the regulations provides for adjustments to the allocations where (1) a school district of an LEA overlaps a county boundary; (2) an LEA serves a substantial number of children from the school district of another LEA; and (3) an LEA's school district is merged, or consolidated, or a portion of the district is transferred to another LEA.

Section 200.23 of the regulations provides exceptions to the county aggregate amounts in any State in which a large number of LEAs overlap county boundaries.

2. Special Incentive Grants

Sections 200.30-200.33 of the regulations contain provisions concerning the allocation of special incentive grants. In summary, an LEA that is eligible to receive a basic Chapter 1 grant for a fiscal year may be entitled to a special incentive grant under Section 116 of Title I if the LEA is located in a State that has in effect for that fiscal year a State compensatory education program (1) that meets the requirements of Section 131(c) of Title I and (2) under which not less than 50 percent of the funds expended in any LEA in the State is spent in low-income areas.

3. Concentration Grants

As stated in §200.40 of the regulations, a State that is eligible for a grant under Chapter 1 for any fiscal year may receive concentration grant funds from the amount of such funds available for that year. In general, these grants are designed to provide additional Chapter 1 services in LEAs which have especially high concentrations of children from low-income families. Sections 200.41-200.42 describe the procedures for determining the amounts of concentration grants. Section 200.43 explains how concentration grants are awarded, and §200.44 indicates that concentration grant funds must be used to carry out activities described in the LEAs' approved Chapter 1 project applications.

4. Reallocation

Under Section 193(b) of Title I, made applicable by Section 554(b) of Chapter 1, if the allocation an LEA receives is more than the amount of Chapter 1 funds which the SEA determines the LEA will use, the excess amount shall be made available to other eligible LEAs with greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the allocation formula as a result of factors such as population shifts or changing economic circumstances. To implement this provision, the SEA should:

a. Determine which LEAs have received a Chapter 1 allocation of funds that exceeds the amount needed to operate their Chapter 1 projects effectively during the fiscal year and to provide a prudent and justifiable reserve for operating their Chapter 1 projects effectively during the next fiscal year. When determining the amount of excess funds available to an LEA, the SEA should consider the amount of current year and carryover funds in relation to the history of spending in the LEA's program and the need for program funds for the next fiscal year. A prudent and justifiable reserve should be determined each year on an individual LEA basis. What is prudent and justifiable for one LEA to reserve may be inadequate or excessive for another LEA.

b. Notify each LEA determined to have excess funds of the amount the SEA is considering reallocating to other LEAs in sufficient time for that LEA to amend its current application to include a proposal for the use of those funds.

c. If an LEA fails to amend its application properly to use the excess funds, the funds are available for reallocation. The SEA must reallocate the excess funds to only those LEAs where there is evidence that the number of children from low-income families has increased since 1979 or 1980. The reason being that population shifts or changing economic circumstances since the 1980 census was taken has resulted in inequities in these LEAs' allocations which are based on statutory formula primarily using poverty data.

   Evidence of increases or redistribution of the poverty population may be obtained by comparing 1979 or 1980 data to comparable data for the present on (1) the number of children receiving free and reduced-price school lunches; (2) the number of children in families receiving Aid to Families with Dependent Children (AFDC) payments; (3) unemployment statistics; or (4) any other available data on numbers of children from low-income families.

d. Of the LEAs determined to be eligible to receive reallocated funds, the SEA must reallocate the available funds to those with the greatest need to redress inequities or mitigating hardships caused by the formula. The SEA may take into consideration the increases in numbers or percentages of children from low-income families, the unmet needs of eligible Chapter 1 children, the LEA's Chapter 1 carryover funds from the previous year, etc.

The SEA may not reallocate funds to LEAs experiencing reduced allocations because of fewer formula children, to reduce the LEAs' general revenue budgets, to fund special programs which the SEA holds as a high priority, or to increase ratably all LEAs' allocations.

* * * * *

SECTION 5

SELECTION OF ATTENDANCE AREAS

Statutory Requirement

Section 556(b)(1), (c), and (d)(1-5) of Chapter 1.

Regulatory Requirement

Section 200.50 of the regulations.

Discussion

Chapter 1 requires an LEA to conduct its projects in selected school attendance areas. These attendance areas must be selected annually. In general, an LEA may select as Chapter 1 project areas only those attendance areas with the highest concentrations of children from low-income families (Section 556(b)(1)(A)). To meet this requirement, the LEA must order its school attendance areas based on concentrations of children from low-income families and must select areas for participation based on that ordering. An LEA may, however, include all of its attendance areas in its Chapter 1 project (Section 556(b)(1)(B)). Moreover, Section 556(d) provides several options available to LEAs in selecting attendance areas. An LEA with a total enrollment of fewer than 1,000 children does not have to comply with the targeting requirements (Section 556(c)).

Guidance in Selection of Attendance Areas

1. Section 556(b)(2) requires an LEA to conduct "an annual assessment of educational needs which identifies educationally deprived children in all eligible attendance areas...." In order to meld this requirement with the requirement to select attendance areas, an LEA may (a) determine which of its attendance areas are eligible under Section 556; (b) then make a preliminary needs assessment to determine grade levels to be served and general instructional objectives; and (c) then select the attendance areas to be designated as project areas.

2. In identifying eligible attendance areas, an LEA should use the best available measure for determining what is a low-income family. For example, the LEA may use data on children from families receiving AFDC, data on families whose children are eligible under the National School Lunch Program, or other appropriate data. The LEA may also use a composite of several indicators. When an LEA uses more than one data source, the indicators must be weighted.

According to the definition of "attendance area" contained in §200.3 of the regulations, "if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

3. In identifying eligible attendance areas, an LEA may group its attendance areas according to grade spans. If an LEA uses grade span groupings, the groupings should be consistent with the grade spans served by the LEA's schools (_e.g._, K-6, 7-9, 10-12).

4. Permissible methods for identifying attendance areas under Section 556(b)(1)(A) and (B) include:

   a. _Percentage method_. An LEA may decide to designate an attendance area as eligible if the percentage of children from low-income families in that area is at least equal to the percentage of children from low-income families in the LEA as a whole. An LEA that uses this method to select attendance areas by grade groupings, (as discussed in item 3 above), rather than in the LEA as a whole, should identify areas in which the percentage of children from low-income families is at least equal to the percentage of those children in the respective grade grouping.

   b. _Numerical method_. An LEA may decide to designate an attendance area as eligible if the number of children from low-income families in that area is at least equal to the average number of children from low-income families in all the attendance areas in the LEA as a whole. An LEA that uses this method to select attendance areas by grade groupings (as discussed in item 3 above), rather than in the LEA as a whole, should identify areas in which the number of children from low-income families is at least equal to the average number of those children in the respective grade grouping.

   c. _Combination of percentage and numerical methods_. An LEA may designate some attendance areas as eligible by using the percentage method and some by using the numerical method. The total number of attendance areas that the LEA identifies as eligible by using the combination method, however, should not be more than the maximum number of attendance areas that the LEA would have identified as eligible if it had used only one of the methods.

d. Uniformly high concentration of children from low-income families. One interpretation of the phrase "uniformly high concentration of such children," as used in Section 556(b)(1)(B), permits an LEA to identify all attendance areas in the LEA or in a particular grade span grouping as eligible to receive Chapter 1 funds if the variation between (a) the percentage of children from low-income families in the attendance area with the highest concentration of such children and (b) the percentage of children from low-income families in the attendance area with the lowest concentration of such children is not more than the greater of 10 percentage points or one-third of the percentage of children from low-income families in the LEA as a whole. If an LEA chooses to use this option, it must provide project services in all attendance areas. It may not use the option to designate all areas as eligible and provide services in only a limited number of those areas.

5. Under Section 556(d)(1) of Chapter 1 and §200.50(b)(1) of the regulations, an LEA may designate as eligible any attendance area in which at least 25 percent of the children are from low-income families.

6. Under Section 556(d)(3) of Chapter 1 and §200.50(b)(2) of the regulations, an LEA may identify a school as eligible to receive Chapter 1 services—even if the school is located in an ineligible attendance area or serves children from more than one attendance area—if the proportion of low-income children in average daily attendance at that school is substantially equal to the proportion of low-income children in an eligible attendance area of the LEA.

7. Under Section 556(d)(2) of Chapter 1 and §200.50(b)(3) of the regulations, an LEA may designate as eligible and serve school attendance areas or schools with substantially higher numbers or percentages of educationally deprived children before areas or schools with higher concentrations of children from low-income families, if approved by the SEA. This action, however, may not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families. Additionally, an LEA may not serve more school attendance areas or schools using data on educational deprivation than would be served using low-income data.

8. Under Section 556(d)(4) of Chapter 1 and §200.50(b)(4) of the regulations, an LEA may continue to provide Chapter 1 services in a school attendance area or school that no longer qualifies as eligible if the area or school was properly selected and served in either of the

two preceding fiscal years. This means that a Chapter 1 project in an area or school that was selected and served under Section 556(b)(1)(A) of Chapter 1 may be continued for up to two additional years even though the area or school is now ineligible. Section 556(d)(4), however, provides for the continuation of a project. Therefore, the provision may be applied only if a Chapter 1 project was conducted in the preceding year. In other words, if the LEA conducted a project under Section 556(b)(1)(A) in the second preceding year but the LEA did not choose to conduct a project under Section 556(d)(4) in the preceding year, then Section 556(d)(4) does not permit the LEA to designate and select the area or school for a project for the current year, since this would not be a continuation of services. (See Option B below.)

The following chart shows how implementation of Section 556(d)(4) and §200.50(b)(4) may affect schools.

In school year 1985-86	In school year 1986-87	In school year 1987-88
Option A.		
The school is eligible and is served under Section 556(b)(1)(A).	The school is not eligible but is served under Section 556(d)(4).	The school is not eligible; it may or may not be served under Section 556(d)(4).
Option B.		
The school is eligible and is served under Section 556(b)(1)(A).	The school is not eligible and is not served under Section 556(d)(4).	The school is not eligible and may not be served under Section 556(d)(4).

9. Section 556(d)(5) of Chapter 1 and §200.50(b)(5) of the regulations provide that, with the approval of the SEA, an LEA may skip eligible attendance areas or schools which have higher proportions of children from low-income families if the children in those areas or schools are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1. In implementing this provision, the statute requires the LEA to determine the number of children in private schools to receive Chapter 1 services without

regard to non-Federal compensatory education funds used to serve eligible children in public schools and to identify eligible children in private schools to receive Chapter 1 services as if no skipping had taken place. This is to ensure that non-Federal funds are factored out when determining that Chapter 1 services to eligible private school children are equitable to those being provided to eligible public school children.

To determine the total number of private school children to be served, the LEA should determine the number who would be served if only Chapter 1 funds were available and no attendance areas were skipped. For example, if the LEA determines that, absent services of the same nature and scope provided from non-Chapter 1 funds, the LEA would serve three attendance areas, it should determine the number of private school children in those areas who would be served. Assume that for all three areas a total of 36 children would be served. If non-Chapter 1 funds are used to serve one of the three areas, enabling Chapter 1 funds to serve a fourth area, private school children from all four attendance areas are eligible. The LEA thus should select a total of 36 private school children—including those most in need of assistance—to be served from all four attendance areas.

10. Section 556(b)(1)(A) of Chapter 1 and §200.50(a)(1)(i) of the regulations provide that projects must be conducted in attendance areas having the highest concentrations of children from low-income families. This requirement, however, does not preclude an LEA from physically locating a project outside the boundaries of an eligible attendance area as long as only eligible educationally deprived children from that attendance area participate in the project. The project services may be delivered at locations where the needs of the eligible children can best be served.

Exemption From Targeting Requirements

Under Section 556(c) of Chapter 1 and §200.50(c) of the regulations, an LEA with fewer than 1,000 children does not have to comply with the targeting requirements. However, eligibility of children must still be based upon an annual assessment of educational needs, and children who are in greatest need of special assistance must be served.

SECTION 6

STUDENT IDENTIFICATION AND SELECTION

Statutory Requirement

Section 556(b), (c), and (d)(6-8) of Chapter 1.

Regulatory Requirement

Section 200.51 of the regulations.

Discussion

Section 556(b)(2) of Chapter 1 requires an LEA to conduct an annual assessment of educational needs which identifies educationally deprived children in all eligible attendance areas. It is through the needs assessment that an LEA decides which educationally deprived children will receive Chapter 1 services and determines what those services will be. The following points provide guidance in the process of identifying and selecting children:

1. Section 200.3(b) of the regulations defines "educationally deprived children" as "children whose educational attainment is below the level that is appropriate for children of their age." LEAs may use whatever measures of educational deprivation they think best identify the educationally deprived children and their special educational needs.

2. If an LEA identifies schools as project schools under Section 556(d)(3), the LEA must also identify educationally deprived children in those schools.

3. As stated in §200.51(a) of the regulations, identification of educationally deprived children must also include those educationally deprived children residing in eligible attendance areas who are enrolled in private schools, regardless of whether the private schools are inside or outside the LEA. An LEA must consider the needs of the educationally deprived children in private schools when determining the general instructional needs to be addressed and grade levels to be served.

4. Section 556(b)(2) of Chapter 1 and §200.51(a)(2) of the regulations require that the children selected for a project must include those educationally deprived children who have the greatest need for special assistance. In determining "children in the greatest need for special assistance," the LEA may select a certain group of children—for instance, those in the bottom quartile based on a standardized test. In general, all children designated as being in greatest need for special assistance and who reside in project areas must be served. However, the LEA may also serve, if funds permit, other educationally deprived children who are not in greatest need.

5. While Chapter 1 funds must be used to serve only educationally deprived children, LEAs have some discretion in deciding which educationally deprived children to serve. For example:

   o Under §200.51(b)(3), an LEA may skip educationally deprived children in greatest need for special assistance if those children are receiving services of the same nature and scope from non-Federal sources. The LEA, however, must serve children who are in greatest need for special assistance who are not receiving services of the same nature and scope from non-Federal sources. For example, an LEA may determine that the children in greatest need for special assistance are those scoring below the 36th percentile on a standardized test. A locally funded compensatory education program, however, serves all children up to the 25th percentile. If the LEA serves all of the children between the 25th and 36th percentiles with Chapter 1 funds, the LEA could then serve other educationally deprived children in its Chapter 1 program as well.

   o Under §200.51(b)(1), if an LEA chooses to serve only children in greatest need for special assistance, the LEA may continue to provide Chapter 1 services for one additional year to an educationally deprived child who is no longer currently in greatest need for special assistance, as long as the child was once identified as being in greatest need of assistance. This provision, however, does not limit an LEA that, in accordance with §200.51(a)(2), serves children in greatest need and other educationally deprived children as well. Thus, if an LEA serves educationally deprived children who are not in greatest need, §200.51(b)(1) does not restrict services for those children for only one additional year or to only children who were previously in greatest need.

- o Under §200.51(b)(2), an LEA may use Chapter 1 funds during the current school year to continue to serve educationally deprived children who begin participation in a Chapter 1 project but who, in the same school year, are transferred to a school attendance area or a school not receiving Chapter 1 funds.

6. An LEA which conducts a schoolwide project in accordance with Section 556(d)(9) of Chapter 1 and §200.54 of the regulations must conduct a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children, and then provide an instructional program designed to meet the special needs of all students in the school. The LEA is required to identify educationally deprived children in such a school only to determine the amount of special supplementary funds the LEA must provide in that school from State or local resources for the non-educationally deprived children. (See Section 10 for further information on schoolwide projects.)

7. Although an LEA with a total enrollment of less than 1,000 children does not need to select school attendance areas in accordance with §200.50, the LEA must identify and select educationally deprived children in accordance with §200.51.

Example

One of a number of possible approaches that an LEA could use to meet the annual needs assessment requirement is set forth below:

STEP ONE - Identification of educationally deprived children

Using criteria and information of its choice, an LEA identifies educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools. Sources of information might include—

- o standardized test score data
- o results of informal diagnoses
- o records of academic performance
- o observations by professional staff

Any funds needed to carry out Step One must come from State or local sources.

STEP TWO - Identification of general instructional areas and needs

Using information collected under Step One, an LEA identifies the general instructional areas (e.g., reading or mathematics) on which the Chapter 1 project will focus, including the grade levels to be served and the types of educational needs to be addressed. In making this determination, the LEA may wish to consider services that are already available from other sources. At this point, the LEA determines which eligible attendance areas will be selected to participate in the Chapter 1 project.

STEP THREE - Selection of educationally deprived children to participate in the Chapter 1 project

Using selection criteria of its choice, an LEA identifies those educationally deprived children in project areas who will participate. The LEA selects, among children eligible to be served, those educationally deprived children in the greatest need for special assistance.

STEP FOUR - Determination of the special educational needs of children selected to participate

An LEA identifies the specific educational needs of the children selected under Step Three and designs project activities which focus directly on those needs.

SECTION 7

CONSULTATION WITH PARENTS AND TEACHERS

Statutory Requirement

Section 556(b)(3) and (e) of Chapter 1.

Regulatory Requirement

Sections 200.53 and 204.21 of the regulations.

Discussion

Educational research has clearly established the importance of parents in educating children. As reported in What Works, the Department's compendium of research about teaching and learning, "[p]arents are their children's first and most influential teachers" and involvement by parents "helps children learn more effectively."

To foster parental involvement in an LEA's Chapter 1 project, Chapter 1 contains two provisions. Under Section 556(e) of Chapter 1, an LEA must convene annually a public meeting, to which all parents of eligible children must be invited, to discuss with those parents the programs and activities provided with Chapter 1 funds. Congress added this provision to ensure parents of eligible children at least one opportunity annually to meet with each other and with appropriate LEA officials for a discussion of the programs and activities affecting their children. In addition, under Section 556(b)(3) of Chapter 1, an LEA must consult with parents and teachers of the children being served, including parents and teachers of private school children, as it designs and implements its Chapter 1 project.

Annual Meeting

Section 204.21 of the regulations implements the annual meeting requirement in Section 556(e). The purposes of that meeting are to discuss with parents the programs and activities carried out with Chapter 1 funds, inform parents of their rights to consult in the design and implementation of the LEA's Chapter 1 project, solicit parents' input, and provide parents an opportunity to establish mechanisms for maintaining ongoing communication among parents, teachers, and LEA officials. The LEA has discretion over how, when, and where the meeting takes place. Depending upon the isolation of communities, the size of the LEA, the availability of meeting space, or geographic conditions, the LEA may hold one or more meetings at sites convenient to the LEA to meet the annual meeting requirement. See H. Rept. 51, 98th Cong., 1st Sess. 5 (1983). The annual meeting should be the first step in an ongoing process of consulting with parents. It is not in itself intended to satisfy the requirement in Section 556(b)(3) of Chapter 1 that projects be designed and implemented in consultation with parents, or otherwise to supersede the specific requirements for parental participation in §200.53.

Section 204.21 of the regulations also implements the provision in Section 556(e) of Chapter 1 that, if parents of eligible children desire further activities, the LEA may, upon request, provide reasonable support for those activities. That support may include, but is not limited to, reasonable access to meeting space and materials, provision of information concerning the Chapter 1 law, regulations, and instructional programs, training programs for parents, and other resources, as appropriate. The LEA may decide what technical support should be provided and the form and amount of resources that are to be made available. See H. Rept. 51, 98th Cong., 1st Sess. 5 (1983); S. Rept. 166, 98th Cong., 1st Sess. 10-11 (1983).

Consultation

Section 200.53 of the regulations implements the consultation requirement in Section 556(b)(3) of Chapter 1. Under §200.53(b) of the regulations, an LEA must develop written policies to ensure that parents of the children being served have an adequate opportunity to participate in the design and implementation of the LEA's Chapter 1 project. The LEA has complete discretion regarding the content of its policies as long as those policies ensure systematic consultation with parents in both the design and implementation of the LEA's Chapter 1 project. Section 200.53(b)(2) lists a number of possible activities for each LEA's consideration, including, for example, reports to parents on their children's progress, conferences between individual parents and teachers, consultation with parents on better ways in which a school can work with parents to achieve the program's objectives, and parent advisory councils. The LEA may need to include several activities in its policies to meet the parental involvement requirement. Whatever the methods of encouraging parental involvement selected, the underlying objective must be to ensure that individual parents are effectively informed of their children's progress and encouraged and assisted in efforts to sustain or enhance that progress.

In addition to consulting with parents, an LEA must consult with the teachers of the children being served in designing and implementing its Chapter 1 project. No particular form of teacher consultation is required. The LEA may hold special staff meetings to discuss the Chapter 1 project, or it may devote portions of regular staff meetings to Chapter 1. Although consultation with teachers of the children being served is required, it is not inconsistent with Chapter 1 to involve all teachers. Consultation with teachers should be a continuous process.

SECTION 8

SUPPLEMENT, NOT SUPPLANT

Statutory Requirement

Section 558(b) and (d) of Chapter 1.

Regulatory Requirement

Section 204.32 of the regulations.

Discussion

Section 558(b) of Chapter 1 requires an LEA to use Chapter 1 funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of the Chapter 1 funds, be made available from non-Federal sources for the education of children participating in Chapter 1 projects. In no case, may Chapter 1 funds be used to supplant funds from non-Federal sources. An LEA is not required to provide Chapter 1 services outside the regular classroom or school program in order to demonstrate compliance with this requirement. Section 558(d) permits the LEA to exclude certain State and local compensatory education program funds when determining compliance with the supplement, not supplant requirement. Services that qualify for this exclusion must meet the requirements in §204.32(b) of the regulations. Section 558(d) does not permit an LEA to exclude State and local funds expended for bilingual, handicapped, or State phase-in programs from determinations of compliance with this requirement.

The LEA, and not the SEA, must decide if it will exercise the option of excluding State and local compensatory education funds in determining compliance with the supplement, not supplant requirement. However, the SEA must determine whether the LEA is using those funds for services that are similar to those that may be provided under Chapter 1.

1. Criteria That SEAs May Choose To Use In Determining Compliance

a. Equitable distribution of regular, non-Federal funds.

It is a violation of the supplement, not supplant requirement if an LEA distributes regular State and local funds in a way that discriminates against children who participate in a Chapter 1 project. For example, an LEA could not—

- Systematically assign a greater number of pupils per teacher in classes that include children who are receiving Chapter 1 services; or

- Deny children who receive Chapter 1 services the opportunity to receive State and locally funded regular programs on the same basis as other children except as allowed in a replacement model.

b. Provision of services required by law.

It is a violation of the supplement, not supplant requirement if an LEA uses Chapter 1 funds to provide services that the LEA is required to provide under—

- Federal, State, or local law.
- A court order.

2. Examples Of Chapter 1 Instructional Services That Meet The Supplement, Not Supplant Requirement

This section describes some examples of project designs which, if operated in public schools, meet the supplement, not supplant requirement. Not all of the designs are appropriate ways of providing Chapter 1 services to private school children. Agencies are free to develop alternative approaches that are consistent with the Chapter 1 statute and regulations.

a. In-class project. For purposes of this section, an "in-class project" means a Chapter 1 project in which instructional services are provided to participating children in the same classroom setting and at the same time they would receive instructional services if they were not participating in the Chapter 1 project. An in-class project meets the supplement, not supplant requirement if—

- The project is particularly designed to meet participants' special educational needs;

- The classroom teacher who would be responsible for the provision of instructional services to participating children in the absence of Chapter 1 remains responsible for, and continues to perform, those duties the teacher would be required to perform in the absence of Chapter 1, including planning the instructional program of participating children, providing them with instructional services, and evaluating their progress; and

- Instructional staff members paid with Chapter 1 funds work closely with the classroom teacher, who is ultimately responsible for the provision of instructional services to participating children in the absence of Chapter 1, so as to provide services which are particularly designed to meet participants' special educational needs.

Example: An LEA wishes to provide a special program of remedial instruction using a teacher aide for ten high school juniors assigned to one business math class, and for five high school sophomores in a separate compensatory math class which meets at the same time. The teacher aide spends half of each class period in each class, working individually with Chapter 1 participants to provide tutorial assistance on an as-needed basis. Such a project satisfies the supplement, not supplant requirement if the classroom teacher, who would be responsible for providing instruction to the participating children in each case, continues to be responsible for tasks such as lesson planning and basic instruction, and meets with the teacher aide on a regular basis to ensure that the Chapter 1 participants are receiving a program of instruction which meets their individual needs.

b. Limited pull-out project. For purposes of this section, a "limited pull-out project" means a Chapter 1 project in which—

- Instructional services are provided to participating children in a different setting or at a different time than would be the case if those children were not participating in the Chapter 1 project; and
- Services are provided for a period that does not exceed 25 percent of the time—computed on a per day, per month, or per year basis—that a participating child would, in the absence of Chapter 1 funds, spend receiving instructional services from teachers of required or elective subjects who are paid with non-Chapter 1 funds.

A limited pull-out project meets the supplement, not supplant requirement if—

- The project is particularly designed to meet participants' special educational needs;
- The classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Chapter 1, remains responsible for, and continues to perform, those duties the teacher would be required to perform in the absence of Chapter 1, including planning the instructional program of the participating children, providing them with instructional services, and evaluating their progress; and
- Instructional staff members paid with Chapter 1 funds work closely with the classroom teacher, who is ultimately responsible for the provision of instructional services to participating children in the absence of Chapter 1, so as to provide services which are particularly designed to meet participants' special educational needs.

Example: Fifty third graders participate in a Chapter 1 project designed to help them improve their reading skills. All the children receive instruction in reading from their classroom teacher as part of their regular program of instruction. Under the Chapter 1 project, a special resource center is staffed by personnel paid with Chapter 1 funds; Chapter 1 participants are pulled out of class for one-half hour, five days per week to receive special assistance at the resource center. The time spent in the resource center totals 2.5 hours, or 12.5 percent of the 20 hours of instructional time the 50 participating children spend with their classroom teacher as part of their regular program of instruction. This project does not violate the supplement, not supplant requirement so long as the classroom teacher whose instruction the Chapter 1 project is designed to supplement continues to remain responsible for the program of instruction which is provided to the participating children and performs regular planning, instructional, and evaluative duties associated with those children. The classroom teacher must also work closely with the resource center personnel to ensure that a coordinated program of instruction is provided so as to meet the special needs of Chapter 1 participants.

c. Replacement project. Extended pull-out projects and replacement projects will both be referred to as replacement projects. In both cases, Chapter 1 services are provided for a period that exceeds 25 percent of time—computed on a per day, per month, or per year basis—that a participating child would, in the absence of Chapter 1 funds, spend receiving instructional services from teachers who are paid with non-Chapter 1 funds. A "replacement project" has the following characteristics:

- o Chapter 1 services are provided to participating children in a different classroom setting or at a different time than would be the case if these children were not participating in the Chapter 1 project.
- o The Chapter 1 project provides services which replace all or part of the course of instruction regularly provided to Chapter 1 participants with a program which is particularly designed to meet participants' special educational needs.
- o The LEA provides either the full-time equivalent number of staff that would have been used in the absence of the Chapter 1 services or the amount of non-Chapter 1 funds required to provide that number of staff. When an LEA has a replacement project serving students in more than one school, the appropriate number of staff persons or funds provided from non-Federal sources must be calculated on a districtwide basis. Fractional parts of full-time equivalent staff persons may be dropped.

Example of an elementary school replacement project:

An LEA decides to provide some third and fourth graders with an intensive program in basic skills, using Chapter 1 funds. The program is to meet every day for two hours. Third and fourth graders ordinarily receive five hours of instructional services per day. The average pupil-teacher ratio for third and fourth graders is 24 to 1.

To determine the number of full-time equivalent staff required to be provided, the LEA—

Determines that the number of children served by a full-time equivalent teacher is 24 children on a full-time basis.

Calculates the number of children served by the Chapter 1 project (80 children are served at 40 percent time; thus the project could serve 32 children on a full-time basis).

Divides the number of full-time equivalent children by the number of such children served by a full-time equivalent staff member (32 divided by 24 equals 1.33).

In this example, one full-time teacher paid with LEA funds must be provided, or, alternatively, the LEA must provide an amount of non-Chapter 1 funds equal to the average salary of one teacher.

Example of a junior or senior high school replacement project:

An LEA decides to provide 200 ninth graders attending two different junior high schools (100 in each school) with a special, intensive remedial reading program in place of those students' regular English class. The replacement project uses a very low pupil to teacher ratio for one period per day (5 periods per week), out of the usual 30 period week. On the average, ninth grade English teachers teach five classes of 25 children each. The classes each meet for five periods per week.

The LEA must provide either the full-time equivalent number of staff that would have been used in the absence of the Chapter 1 service to provide instruction in English, or the amount of non-Chapter 1 funds required to provide that number of staff.

To determine the number of full-time equivalent staff required to be provided, the LEA—

Calculates the number of children served, on the average, by a full-time equivalent staff member (25 children multiplied by 5 classes equals 125 children served per day).

Calculates the number of children served by the Chapter 1 project (200 children served per day).

Divides the number of children served by the Chapter 1 project by the number of children served by a full-time equivalent staff member (200 divided by 125 equals 1.6).

In this example, the LEA must provide either one full-time teacher paid with non-Chapter 1 funds or an amount of non-Chapter 1 funds equal to the average salary of one teacher.

d. Add-on project. For purposes of this section, an "add-on project" is one in which Chapter 1 services are provided at a time in which participants would not otherwise be receiving State and locally funded instructional services, including periods such as vacations, weekends, before or after regular school hours, or during noninstructional time. An add-on project meets the supplement, not supplant requirement so long as the project is particularly designed to meet participants' special educational needs.

3. Examples Of Permissible Services For Handicapped Children

An LEA may not use Chapter 1 funds to provide special educational services that the LEA is required to provide to handicapped children under Federal or State law. Therefore, services which must be provided to children due to their handicap (*e.g.*, those required by Section 504 of the Rehabilitation Act of 1973) may not be paid for with Chapter 1 funds. An LEA, however, may use Chapter 1 funds to provide services to handicapped children—without violating the supplement, not supplant requirement—if the Chapter 1 services have all of the following characteristics:

- The LEA designs its Chapter 1 project to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;
- The LEA sets overall program objectives that do not distinguish between handicapped and nonhandicapped participants;

- The LEA—

  (A) Through the use of uniform criteria, selects children for participation on the basis of educational deprivation, not on the basis of handicap; and

  (B) Selects as participating handicapped children only those who can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA substantially modifying the educational level of the subject matter; and

- The LEA provides Chapter 1 services at intensities taking into account the needs and abilities of individual participants, but without distinguishing generally between handicapped and nonhandicapped participants with respect to the instruction provided.

4. An Example Of Permissible Services For Children Of Limited English-Speaking Proficiency

An LEA may not use Chapter 1 funds to provide special educational services that the LEA is required to provide to children of limited English-speaking proficiency under Federal or State law, including provision of services required by Lau v. Nichols, a case in which the Supreme Court held that the San Francisco public schools had violated Title VI of the Civil Rights Act of 1964 by requiring limited-English-proficient Chinese children to attend classes taught exclusively in English. The level of services necessary to meet Federal, State, or Lau requirements must be provided from non-Chapter 1 sources. An LEA may use Chapter 1 funds to provide services to children of limited-English-speaking proficiency—without violating the supplement, not supplant requirement—if the Chapter 1 services have all of the following characteristics:

- The LEA designs its Chapter 1 project to address special needs resulting from educational deprivation, not needs relating solely to a child having limited English-speaking proficiency;

- The LEA sets overall project objectives that do not distinguish between participants of limited English-speaking proficiency and other participants;

- Through the use of uniform criteria, the LEA selects children for participation on the basis of educational deprivation, not on the basis of limited English-speaking proficiency; and

- The LEA provides Chapter 1 services taking into account the needs and abilities of individual participants but without distinguishing generally between children of limited English-speaking proficiency and other children with respect to the instruction provided. The LEAs may use Chapter 1 funds to provide staff who are bilingual and secure appropriate materials, when such staff and materials are necessary to address the educational deprivation of children to be served.

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SECTION 9

COMPARABILITY OF SERVICES

Statutory Requirement

Section 558(c) and (d) of Chapter 1.

Regulatory Requirement

Section 200.60 of the regulations.

Discussion

Section 558(c)(1) of Chapter 1 provides that an LEA may receive Chapter 1 funds only if State and local funds will be used in the district to provide educational services in project areas which, taken as a whole, are at least comparable to the educational services provided in nonproject areas. For the purpose of determining compliance with the comparability requirement in Section 558(c), an LEA may exclude, in accordance with Section 558(d), State and local funds expended for special programs to meet the educational needs of educationally deprived children, including compensatory education programs, that meet the requirements of Section 131(c) of Title I; bilingual education; special education; and certain State phase-in programs described in Section 131(d) of Title I. Section 200.60(d) of the regulations contains the standards that these programs must meet to be excluded from the LEA's comparability determination. The LEA should note that Section 558(d) permits the LEA to exclude from the comparability requirement more programs than it may exclude from the supplement, not supplant requirement.

States should provide guidance to LEAs on methods and procedures for ensuring and demonstrating how comparable educational services are delivered. The guidance should include the following characteristics of the requirement:

1. Chapter 1 does not require LEAs to file comparability reports. An LEA is deemed to have met the comparability requirement if it has filed with the SEA a written assurance that it has established—

    a. a districtwide salary schedule;
    b. a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and
    c. a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

Although LEAs are not required to file comparability reports, an LEA must ensure that it complies with this assurance and will be held accountable for any breach. Records must be maintained in accordance with §204.10(b)(2) and (c) of the regulations to demonstrate that the assurance was implemented. An LEA that has failed to comply with the assurance will be in violation of the Chapter 1 statute. Compliance with the assurance may be examined as part of program reviews, audits, or lawsuits concerning compliance.

2. Section 558(c)(2) of Chapter 1 and §200.60(c) of the regulations specifically provide that unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as factors in determining comparability of services.

   In defining the phrase "unpredictable changes" in Section 558(c)(2) of Chapter 1, each SEA has considerable flexibility. Such changes would not generally include those which the LEA knew, prior to the beginning of the school year, would occur—e.g., planned school closings and staff reassignments.

3. Section 558(c)(2) offers one test for determining compliance with the comparability requirement. The statute does not require that this be the only way LEAs may demonstrate comparability. An SEA may establish alternative methods that its LEAs must use in meeting this requirement.

   The Chapter 1 statute and legislative history do not provide guidance on the meaning of the term "equivalence" as it is used in Section 558(c)(2). Each SEA, therefore, may wish to develop standards, e.g., by comparing pupil/staff ratios or per pupil levels of expenditure, for use in deciding whether an LEA's policy ensures equivalence among schools. With respect to equivalence of teachers, administrators, and auxiliary personnel, one permissible approach would be to use either or both of the criteria that were previously used to determine comparability of services under §201.116 of the Title I regulations. If an SEA does choose to use a method similar to this under Chapter 1, it could either use the same 5 percent/10 percent limits or it may, in accordance with the statutory requirements, establish its own reasonable limits.

It would also be permissible to allow the grade level and size groupings that were permitted under §201.117 of the Title I regulations. Under §201.117, an LEA could also exclude schools with 100 or less students from its comparability determinations. Since approaches described in §§201.116-201.117 of the Title I regulations were acceptable under Section 126(e) of Title I, those approaches are acceptable under the similar comparability language in Section 558(c) of Chapter 1. Sections 201.116 and 201.117 of the Title I regulations are found at the end of this section.

4. Section 558(c)(1) of Chapter 1 and §200.60(b) of the regulations require that if an LEA selects all its school attendance areas as project areas, the LEA may receive Chapter 1 funds only if it uses State and local funds to provide services which, taken as a whole, are substantially comparable in each project area. An SEA should provide guidance to its LEAs for demonstrating comparability in this situation. It is permissible to follow the procedure in §201.116(b) of the Title I regulations for this purpose.

Guidance on Comparability
Taken From
January 1981 Title I Regulations

§ 201.116 Criteria for determining comparability of services.

(a) *Criteria that apply if some schools serve project areas and other schools serve school attendance areas that do not receive Title I assistance.* An LEA meets the comparability requirements in § 201.112(a) if the SEA properly determines, for schools serving corresponding grade levels as provided under § 201.117, that—

(1) The average number of children enrolled per instructional staff member for each school serving a project area or school attendance area that has been skipped under § 201.65 is not more than 105 percent of the average number of children enrolled per instructional staff member in schools serving school attendance areas in the LEA that are not receiving Title I assistance and were not skipped under § 201.65; and

(2) The average per child expenditure of State and local funds for instructional staff in each school serving a project area or school attendance area that has been skipped under § 201.65 is not less than 95 percent of the average per child expenditure of State and local funds for instructional staff in schools serving school attendance areas in the LEA that are not receiving Title I assistance and were not skipped under § 201.65.

(b) *Criteria that apply if all schools serve project areas.* The LEA meets the comparability requirement in § 201.112(b) if, for corresponding grade levels as provided under § 201.117, both of the following conditions prevail:

(1) In each school serving a project area, the average number of children enrolled per instructional staff member is not more than 105 percent of the average number of children enrolled per instructional staff member in the group of schools serving those project areas with the lowest percentages or numbers of children from low-income families. This group of schools may not include more than one-half of all schools serving project areas.

(2) In each school serving a project area, the average per child expenditure of State and local funds for instructional staff is not less than 95 percent of the average per child expenditure of State and local funds for instructional staff in the group of schools serving those project areas with the lowest percentages or numbers of children from low-income families. This group of schools may not include more than one-half of all schools serving project areas.

(Sec. 126(e), 20 U.S.C. 2736(e))

§ 201.117 Grouping schools by corresponding grade levels.

(a) For the purpose of demonstrating compliance with the comparability requirements in §§ 201.112–201.116, an LEA shall—subject to paragraphs (b), (c), and (d) of this section—group all of its schools by corresponding grade levels in up to three groups.

(b) If the LEA has schools that serve eight or more grades above kindergarten, the LEA may consider these schools to be a separate group in addition to the groups determined under paragraph (a) of this section.

(c)(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if one school has an enrollment for a particular grade span that is at least two times that of another school, the LEA may divide—providing it can justify its division under paragraph (c)(4) of this section—the schools in that span into two groups:

(i) One group for the schools with the larger enrollments.

(ii) One group for the schools with the smaller enrollments.

(2) An LEA that has schools with enrollments of 100 or fewer students shall exclude those schools in making a determination of the size of the smallest school.

(3) An LEA may not use the procedure in paragraph (c)(1) of this section to divide a school into two groups if that division would have the effect of exempting any school from compliance with the comparability requirements. However, if this restriction requires an LEA to compare a school with an enrollment for a particular grade span of at least two times that of the school with which it is being compared, the LEA may, with approval of the SEA, weight the enrollments in one or both schools to provide for a more equitable comparison as long as such weighting is consistent with State standards and practices.

(4) In justifying the division permitted in paragraph (c)(1) of this section, the LEA or SEA shall indicate why the different sizes of the schools require different expenditures or pupil-teacher ratios.

(d) Except as provided in paragraphs (b) and (c) of this section, in grouping its schools as required by paragraph (a) of this section, an LEA shall meet the following requirements:

(1) An LEA serving seven or fewer grade levels above kindergarten is limited to one group.

(2) An LEA serving eight or nine grade levels above kindergarten is limited to two groups.

(3) An LEA serving any levels from grades 6 through 12, but only those levels, is limited to two groups if the LEA serves five or more grade levels, and to one group if the LEA serves four or fewer grade levels.

(4) If a school serves grades in more than one group, the LEA shall include that school—

(i) In the group with which the school has the most grade levels in common; or

(ii) In the group that includes the lower grade levels, if the school has the same number of grade levels in common with two or more groups.

(Sec. 126(e), 20 U.S.C. 2736(e))

SECTION 10

SCHOOLWIDE PROJECTS

Statutory Requirement

Section 556(d)(9) of Chapter 1.

Regulatory Requirement

Section 200.54 of the regulations.

Discussion

Section 556(d)(9) of Chapter 1 provides that an LEA may carry out a project to upgrade the entire educational program in a school if 75 percent or more of the children in the school or attendance area served by the school are from low-income families. This section permits schoolwide projects to be operated in the same manner and only to the same extent as permitted under Section 133 of Title I. However, because parent advisory councils are not required under Chapter 1, an LEA is not required to acquire approval by such a council to operate a schoolwide project as required by Section 133(b)(4) of Title I.

The Title I legislative history explains the rationale for schoolwide projects. "Once the percentage of poverty children in a Title I school reaches a very high level, it makes little sense and is cumbersome to enforce requirements that Title I serve only Title I children, or that Title I services be supplemental in character." Rather, it is a "sounder educational practice to plan a curriculum focusing on the entire educational program and thus avoid the considerable administrative demands resulting from separate recordkeeping and scheduling of special programs." H. Rept. 1137, 95th Cong., 2d Sess. 35-36 (1978). That same rationale applies to Chapter 1, too. Accordingly, in each school that has been selected for a schoolwide project, the LEA is not required to—

- Comply with the requirements under Chapter 1 concerning the commingling of Chapter 1 funds with funds available for regular programs.
- Comply with the requirements concerning identification and selection of children to participate in Chapter 1 projects.
- Demonstrate that the services provided with Chapter 1 funds are supplementary to the services regularly provided in the school.

An LEA that wishes to conduct a schoolwide project must develop a plan for that project that meets the requirements listed in §200.54(b) of the regulations. Although the LEA does not need to identify and select children in accordance with §200.51 of the regulations, the LEA's plan must include, among other things, a comprehensive assessment of the educational needs of all the children with particular emphasis on the special needs of the educationally deprived children. The LEA's plan must be approved by the SEA. In addition, the LEA must meet the following financial requirements:

- Maintenance of effort: During the fiscal year the LEA is operating its schoolwide project, the LEA must, in each school selected for a schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a State compensatory education program—that is at least equal to the amount of State and local funds that the LEA spent per child in that school during the preceding fiscal year.

- Supplement, not supplant: The LEA must ensure that each school selected for a schoolwide project receives all non-Federal funds that it would have received had it not been selected for a schoolwide project. This financial requirement must be met even though the LEA does not need to demonstrate that the Chapter 1 services are supplementary.

- Chapter 1 funds: In each school selected for a schoolwide project, the LEA must provide, for each educationally deprived child served in the school, an amount of Chapter 1 funds that is at least equal to the amount of Chapter 1 funds the LEA provides for each educationally deprived child served in other Chapter 1 schools, if any. The LEA should use the same criteria for identifying the educationally deprived children in its schoolwide project that it uses in its other Chapter 1 projects.

- Special supplementary State and local funds: In each school selected for a schoolwide project, the LEA must provide for each child served by the project who is not educationally deprived, an amount of special supplementary State and local funds that is at least equal to the amount of Chapter 1 funds that the LEA provides for each educationally deprived child served in the school.

The following example illustrates the minimum amount of Chapter 1 funds and special supplementary State and local funds that must be expended in a school with a schoolwide project above the level of normal State and local funds.

> There are 1,000 children attending a school in which 800 children are educationally deprived. The average expenditure of Chapter 1 funds in other Chapter 1 schools without schoolwide projects is $500 per Chapter 1 participant. The schoolwide project school must therefore receive from Chapter 1 funds $500 per educationally deprived child, or a total of $400,000 (800 x $500). Similarly, the schoolwide project school must receive from special supplementary State and local funds $500 per noneducationally deprived child, or $100,000 (200 x $500).

Please note that, although eligibility for a schoolwide project is based on the percentage of children from low-income families, contributions are based on the number of educationally deprived children.

SECTION 11

SERVICES FOR NEGLECTED OR DELINQUENT CHILDREN IN LOCAL INSTITUTIONS

Statutory Requirement

Section 554 of Chapter 1 incorporates the funding provisions from Title I, including Section 111(c)(1)(A)(iii) which provides that among the children to be counted to determine an LEA's allocation are children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent (N or D) children.

Chapter 1 also incorporates Section 111(a)(3)(A) of Title I which provides that:

> Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educatonal needs of children...who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency...which does assume such responsibility shall be eligible to receive such portion of the allocation.

Regulatory Requirement

Section 200.22(a) of the regulations.

Discussion

An LEA receives an allocation of Chapter 1 funds based on the number of children in local institutions for N or D children as described in §200.22(a)(1) of the regulations. This allocation is based on the number of children, aged 5 through 17, in the LEA's district who resided in a local institution for N or D children for at least 30 consecutive days, at least one day of which was in the month of October of the preceding year. (These children may not have been counted for allocations for Chapter 1 programs for children in institutions for N or D children operated by a State agency.) If a child resided in the institution from September 2 through October 1 of the preceding year, the child would meet the residency requirement. Likewise, if the child resided in the institution from October 31 through November 29 of the preceding year, he or she would meet the residency requirement.

If the SEA determines that the LEA is unable or unwilling to provide Chapter 1 services to children in the institution, it shall make arrangements for services in accordance with §200.22(a)(2) or (3) of the regulations.

The funding provisions clearly indicate that an LEA is to receive that portion of its allocation based on children in local institutions for N or D children only if the LEA provides services for the children in such institutions. An SEA and an LEA may wish to consider the following points, along with other factors, in designing and implementing services for children in institutions for N or D children:

1. In conducting the annual needs assessment, particular attention should be given to the needs of the children in the local N or D institution. The children are counted for the purpose of computing an allocation because of special needs associated with their particular circumstances; accordingly, their needs should be assessed with those circumstances in mind.

   It is possible that the needs assessment will indicate that the children in the institution need only the same remedial instruction and related services offered to other Chapter 1 participants in the LEA. In these cases, the children need not be offered services beyond those offered to the other participants. However, diagnostic efforts may reveal a need for special treatment for these children which is different from or in addition to the regular Chapter 1 services provided to other children.

   If the institutionalized children attend a private school in the institution, the LEA may conduct the same assessment of educational needs for these children as it does in the project area for other children or it may conduct a special assessment.

2. LEAs provide services only for those children residing in local institutions for N or D children as described in §200.3(b)(2) of the regulations. Children who are in the institution only for day care services are not considered residents of the institution. Children in State-operated institutions receive Chapter 1 services through the State agency that operates those institutions and provides the regular program of instruction for these children.

3. Services for the institutionalized children need not be provided in the institution. N or D children may receive Chapter 1 services at the public schools they attend, whether or not those schools have Chapter 1 projects.

4. An LEA that provides Chapter 1 services to eligible N or D students on the premises of the institution must monitor the program to ensure that the assurances in Section 436(b)(2) and (3) of GEPA are implemented.

5. An SEA may choose not to require an LEA to make a separate application or budget or keep a separate account of Chapter 1 funds expended for N or D children. Only if the LEA fails to provide assistance to meet the needs of N or D children is the SEA required to reduce the LEA's allocation by the amount that is based on N or D children. If an SEA requires the LEA to account separately for Chapter 1 funds expended for N or D children, it should provide guidance to those LEAs on the availability of unused funds for institutionalized children.

   The SEA may choose not to require a separate project description, including an evaluation of the activities provided to these children when they are being served in the regular LEA program. However, in such a case, the SEA must be informed how the eligible children in the institution are to receive services and how the activities will be evaluated.

6. The SEA conducts an annual survey of children in institutions for N or D children for purposes of Chapter 1 allocations. The SEA reports the results of this survey to the U.S. Department of Education and certifies that the institutions listed meet the eligibility requirements of Chapter 1 and that the information provided is complete and accurate. Both the SEA and LEA have the responsibility to ensure that the children residing in institutions for the N or D are eligible to be counted for allocation purposes and are eligible for services. They must ensure that the institutions are those defined in §200.3(b) of the regulations.

7. If an SEA or LEA contracts with an institution or agency to provide the Chapter 1 services to eligible children in the institution, it must monitor the implementation of the contract to see that the requirements of the applicable statutes, regulations, program, and the contract are met. This includes fiscal controls, student selection, program planning and operation, and evaluation of the program.

* * * * *

SECTION 12

LEA EVALUATION

Statutory Requirements

Sections 555(e) and 556(b)(4) of Chapter 1.

Regulatory Requirement

Section 204.23(b) of the regulations.

Discussion

Under Section 556(b)(4) of Chapter 1, an LEA is required to conduct an evaluation of its Chapter 1 project at least once every three years. That evaluation must assess the project's effectiveness in achieving the goals set for the project and must include objective measurements of educational achievement in basic skills and a determination of whether improved performance is sustained over a period of more than one year. The LEA must consider the results of this evaluation in the improvement of the LEA's Chapter 1 project.

To determine the sustained effects of the program over a period of more than one year, the LEA should include the achievement results of those students who have participated in Chapter 1 over a period of time, not just those students who remain in the program every year. For example, a sustained effects analysis conducted in school year 1986-87 should include achievement results of all children who participated in Chapter 1 during either or both school years 1985-86 and 1986-87. An LEA with a large number of children participating in the program may use recognized statistical sampling techniques in the evaluation design.

Subject to the requirements in Section 556(b)(4) of Chapter 1, an LEA has considerable discretion concerning this evaluation. For example, the LEA may use any objective measurement instrument to assess educational achievement in basic skills. Likewise, the LEA may determine the design of the evaluation. The models that were described in §§201.172-201.174 of the Title I regulations are appropriate evaluation designs and may be used. These sections of the Title I regulations are found at the end of this section of the NRG. In addition, the LEA may measure sustained performance by administering a pre-test, a post-test, and then taking a third measurement some time later. Acceptable testing cycles for such a schedule include fall/fall/fall and spring/spring/spring.

In order to fulfill its evaluation requirement in Section 555(e) of Chapter 1, an SEA may wish to set some standards for its LEAs' evaluations. For example, Section 555(e) requires the SEA to evaluate its Chapter 1 programs at least every two years. The SEA may thus wish to require LEA evaluations every two years also. Likewise, §204.23(a) of the regulations allows the SEA to aggregate data from LEA evaluation reports to compile statewide totals. To obtain uniform data, the SEA may wish to require that its LEAs use specific instruments to measure achievement or specific evaluation designs.

Guidance on Evaluating Chapter 1 Programs
Taken From
January 1981 Title I Regulations

§ 201.172 Use of models by an LEA.

An LEA shall use one of the models in § 201.173—or an approved alternative (see § 201.174)—in the evaluation of each regular school year Title I project that provides instructional services in reading, language arts, or mathematics in grades 2 through 12.

(a) The models require that the LEA administer a test—

(1) Before or at the beginning of services for the project period (pre-test); and

(2) After or at the end of the project period (post-test).

(b) The models compare the post-test scores of Title I children to an estimate of what their post-test scores would have been if they had not received Title I services ("expected performance").

(c) Each model provides a different method for estimating expected performance using the scores of children not receiving Title I services who are tested at the same time of year.

(d) With any of the three models, the LEA may use a test with or without national norms.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.173 Model requirements.

(a) *Norm-Referenced Model.* An LEA using the Norm-Referenced Model shall—

(1) Administer a pre- and post-test to Title I children; and

(2) Estimate expected performance using the performance of children in a norm sample developed—

(i) Locally;

(ii) By the SEA; or

(iii) By a test publisher.

(b) *Comparison Group Model.* An LEA using the Comparison Group Model shall—

(1) Identify a comparison group of educationally deprived children who—

(i) Are similar to Title I children with respect to educationally relevant factors (such as age, socio-economic status, and previous achievement); and

(ii) Are not receiving Title I or similar compensatory education services;

(2) Administer a pre- and post-test to both the Title I children and the children in the comparison group; and

(3) Estimate expected performance for the Title I children by using the test scores of the children in the comparison group.

(c) *Regression Model.* An LEA using the Regression Model shall—

(1) Administer a pre-test to a group of children in Title I eligible schools at grade levels to be served by Title I. In the Regression Model only, the pre-test may consist of a test, teacher judgment of student performance, or a composite of these;

(2) Establish a cutoff score and provide Title I services to those children scoring below the cutoff. Children scoring above the cutoff are the comparison group for the evaluation; and

(3) Administer a post-test to both groups and estimate expected performance using the pre- post-test scores for the comparison group.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

§ 201.174 Alternative models.

(a) An LEA may use an alternative to one of the three models in § 201.173 for the evaluation of regular school year reading, language arts, or mathematics projects in grades 2 through 12. An alternative model would provide a method for estimating expected performance that differs from methods provided by the three models.

(b) The use of an alternative model must be approved first by the SEA and then by the Secretary.

(c) To be approved, an alternative model must yield a valid measure of—

(1) The Title I children's performance in reading, language arts, or mathematics;

(2) Their expected performance; and

(3) The results of the Title I project expressed in the common reporting scale established by the Secretary for SEA reporting.

(d) The request for using an alternative model may be submitted to the Secretary by the LEA or the SEA acting at the request of one or more LEAs.

(e) The request must indicate how the alternative model meets the three requirements in paragraph (c) of this section.

(f) The Secretary responds to the request in writing within 30 days.

(Sec. 124(g), 20 U.S.C. 2734(g); Sec. 183, 20 U.S.C. 2833)

SECTION 13

PARTICIPATION BY CHILDREN IN PRIVATE SCHOOLS

Statutory Requirement

Sections 556(b) and 557(a) and (b) of Chapter 1.

Regulatory Requirement

Sections 200.70-200.87 of the regulations.

Discussion

The regulatory requirements for the participation of educationally deprived children in private schools are contained in §§200.70-200.75 of the regulations implementing the Chapter 1 program for LEAs.

The following discussion deals with specific issues concerning the participation of children in private schools in an LEA's Chapter 1 project:

1. Private school children to be served

   As stated in §200.70, an LEA must provide the opportunity to participate in Chapter 1 services to "educationally deprived children residing in a project area of the LEA who are enrolled in private elementary and secondary schools...." This requirement applies even though such children are attending private schools outside the project area. Conversely, the LEA is not required to serve children who reside outside a project area but who attend private schools located within the project area.

2. Exclusion of children enrolled in private schools which are in violation of Title VI of the Civil Rights Act of 1964

   An LEA may require private school officials who wish their students to participate in Chapter 1 to sign an assurance regarding compliance with Title VI of the Civil Rights Act of 1964. The applicability of Title VI and the responsibility of the LEA for Title VI compliance is the subject of the Office for Civil Rights' "Report on Nonpublic Schools Participating in Federal Programs" published in the Federal Register on August 23, 1976 (see 41 FR 35553).

3. Exclusion of children attending a private school that is not in compliance with State laws

An LEA may not exclude from Chapter 1 services children who attend a private school that is not in compliance with State laws, if that private educational institution qualifies as a private elementary or secondary school under State law.

4. Exclusion of children in a private school that does not want its children to participate

An LEA is not required to provide Chapter 1 services to eligible children in a private school if the officials of the school have stated that the children will not participate in Chapter 1 programs, provided the services offered are equitable with those being provided in public schools. If private school officials reject Chapter 1 services for eligible Chapter 1 children, the LEA may retain for other authorized Chapter 1 purposes its full allocation of Chapter 1 funds, including that portion that may have been based on numbers of eligible private school children. However, LEAs and parents of private school children enrolled in these schools are free to work out other arrangements to serve these children.

5. Minimum number of private school children served at one location

In general, LEAs are not required to establish a separate Chapter 1 program for private school children when the school they attend enrolls less than ten eligible children. The minimum number is a guide only—in some instances, it may be possible and desirable to set up programs and, in these cases, LEAs should do so. Where no separate program is established, private school children must be offered an opportunity to participate in the program being operated for public school children. If transportation is necessary, it may be provided with Chapter 1 funds.

6. Equitability of services

Section 200.71 of the Chapter 1 regulations contains provisions regarding equitability of both funds and services. In regard to funds, the key statement is that "expenditures" must be equal. In regard to services, the regulations state that the LEA "provides" services on an equitable basis. In both instances, the test is what was actually spent and what services were actually provided—not what was planned. Therefore, if adjustments to the program are needed during the school year to ensure private school students are equitably served, they should be made.

7. Services to be provided to children in private schools

In conducting the annual needs assessment described in §200.50 of the regulations, an LEA must take into account the educational needs of educationally deprived children in private schools. To facilitate this process, officials of the LEA must consult with private school officials. As stated in §200.71 of the regulations, "The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served." If the needs assessment reveals that the private school children have different educational needs than public school children, an LEA must consider those different needs in designing its Chapter 1 project. The subject(s) or services(s) determined by the LEA to be the areas of greatest need of children in the project area must be the same for all children. Therefore, the subject(s) or service(s) provided in the project area should be the same regardless of whether the children attend public or private schools.

As discussed in Section 6 of this document, an LEA must conduct an annual needs assessment that: (1) identifies educationally deprived children, including those attending private schools, in all eligible attendance areas; (2) includes the selection of those children in greatest need; and (3) determines project participants' needs with sufficient specificity to ensure concentration on those needs. In conducting its needs assessment, the LEA treats children in private schools no differently than children in public schools. That is, their needs are considered in determining the instructional services to be offered and the project areas to be served. Once the LEA selects project areas and determines the instructional areas to be served, children in private schools and in public schools are selected on essentially the same basis.

Private school children may be served only if they reside in a project area. Accordingly, if the LEA selects only elementary level project areas, it should serve private school children only at the elementary level. An LEA has the flexibility to provide services to private school children at different grades within a level, e.g., at the elementary level, grades 1-3 in the public schools, and grades 4-6 in the private schools.

8. Use of Chapter 1 funds to supplement, rather than supplant services provided by a private school

As stated in §200.72 of the regulations, "An LEA shall use Chapter 1 funds to provide services that supplement the level of services that would, in the absence of Chapter 1 services, be available to children in private schools."

9. Allocation of Chapter 1 funds directly to a private school

Chapter 1 funds may not be allocated directly to a private school. As stated in §200.70(c) of the regulations, "The LEA shall exercise administrative direction and control over Chapter 1 funds and property that benefit educationally deprived children in private schools." In addition, §200.72(b) specifies that an LEA shall use Chapter 1 funds to meet the special educational needs of educationally deprived children in private schools rather than to meet the needs of the private schools or the general needs of the children in those schools.

10. Use of public school employees

Section 200.70(d) of the regulations specifies that Chapter 1 services to children in private schools "must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency or corporation who or which, in the provision of those services, is independent of the private school and of any religious organizations." However, Chapter 1 services may be provided by persons not independent of the private school or of a religious organization, if they are employed directly by the LEA, as long as the services are provided at a time when the person is not being paid by the private school. During the time that the person is providing Chapter 1 services, he/she must be under the supervision and administrative control of the LEA and must have no responsibilities to the private school. In addition, as stated in §200.73 of the regulations, an LEA may use Chapter 1 funds to make public employees available in other than public facilities to the extent necessary to provide equitable Chapter 1 services for children in a private school if those services are not normally provided by the private school. As discussed further below, however, instructional services may not be given within private, sectarian schools.

11. Services to private school children when public school attendance areas are skipped

Section 556(d)(5) of Chapter 1 provides that with the approval of the SEA, an LEA may skip eligible school attendance areas or schools which have higher proportions of children from low-income families if the children in those areas or schools are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1. In exercising this provision, the LEA shall determine the number of children in private schools to receive Chapter 1 services without regard to the skipping provision. (See Section 5, Selection of attendance areas, number 8.)

12. Aguilar v. Felton

The United States Supreme Court issued its decision in Aguilar v. Felton on July 1, 1985. In that decision, the Supreme Court held that instructional services under Chapter 1 cannot be provided within religiously affiliated private schools. At the same time, however, the Supreme Court's decision left in place the statutory requirement that Chapter 1 services must be provided to eligible private school children on an equitable basis. The State agency is therefore required, in performing its duties under the Chapter 1 statute and regulations, to ensure that LEAs adhere to the Felton decision and that private school children continue to receive equitable Chapter 1 services. The Department issued questions and answers as guidance to Chief State School Officers in August 1985 and June 1986 concerning how the Supreme Court's decision on Aguilar v. Felton affects the operation of Chapter 1 programs.

EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

Subtitle D—Elementary and Secondary Education Block Grant

SEC. 551. This subtitle may be cited as the "Education Consolidation and Improvement Act of 1981".

(20 U.S.C. 3801 note) Enacted August 13, 1981, P.L. 97-35, sec. 547, 95 Stat. 463.

CHAPTER 1—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

DECLARATION OF POLICY

SEC. 552. The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special needs of educationally deprived children, on the basis of entitlements calculated under title I of the Elementary and Secondary Education Act of 1965, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control. Further, the Congress recognizes the special educational needs of children of low-income families, and that concentrations of such children in local educational agencies adversely affect their ability to provide educational programs which will meet the needs of such children. The Congress also finds that Federal assistance for this purpose will be more effective if education officials, principals, teachers, and supporting personnel are freed from overly prescriptive regulations and administrative burdens which are not necessary for fiscal accountability and make no contribution to the instructional program.

(20 U.S.C. 3801) Enacted August 13, 1981, P.L. 97-35, sec. 552, 95 Stat. 464.

DURATION OF ASSISTANCE

SEC. 553. During the period beginning October 1, 1982, and ending September 30, 1987, the Secretary shall, in accordance with the provisions of this subtitle, make payments to State educational agencies for grants made on the basis of entitlements created under title I of the Elementary and Secondary Education Act of 1965 and calculated in accordance with provisions of that title in effect on September 30, 1982.

(20 U.S.C. 3802) Enacted August 13, 1981, P.L. 97-35, sec. 553, 95 Stat. 464.

APPLICABILITY OF TITLE I PROVISIONS OF LAW

SEC. 554. (a) PROGRAM ELIGIBILITY.—Except as otherwise provided in this subtitle, the Secretary shall make payments based upon the amount of, and eligibility for, grants as determined under the following provisions of title I of the Elementary and Secondary Education Act in effect on September 30, 1982:

(1) Part A—"Programs Operated by Local Education Agencies":

(A) Subpart 1—"Basic Grants"; and
(B) Subpart 2—"Special Grants".

(2) Part B—"Programs Operated by State Agencies":

(A) Subpart 1—"Programs for Migratory Children";

(B) Subpart 2—"Programs for Handicapped Children";

(C) Subpart 3—"Programs for Neglected and Delinquent Children"; and

(D) Subpart 4—"General Provisions for State Operated Programs".

(b) Administrative Provisions.—The Secretary, in making the payments and determinations specified in subsection (a), shall continue to use the following provisions of title I of the Elementary and Secondary Education Act as in effect on Septemeber 30, 1982:

(1) Part E—"Payments":

(A) Section 191—"Payment Methods";

(B) Section 192—"Amount of Payments to Local Educational Agencies";

(C) Section 193—"Adjustments Where Necessitated by Appropriations"; and

(D) Section 194—"Payments for State Administration", subject to subsection (d) of this section.

(2) Part F—"General Provisions":

(A) Section 197—"Limitation on Grants to Puerto Rico"; and

(B) Section 198—"Definitions" and conforming amendments to other Acts, except that only those definitions applicable to this subtitle shall be used.

(c) Applicability Rule.—The provisions of title I of the Elementary and Secondary Education Act of 1965 which are not specifically made applicable by this chapter shall not be applicable to programs authorized under this chapter.

(d) Amendment.—Section 194(a)(1) of the Elementary and Secondary Education Act of 1965 is amended by striking out "1.5 per centum" and inserting in lieu thereof "1 per centum".

(20 U.S.C. 3803) Enacted August 13, 1981, P.L. 97-35, sec. 554, 95 Stat. 464.

AUTHORIZED PROGRAMS

Sec. 555. (a) General.—Each State and local educational agency shall use the payments under this chapter for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of educationally deprived children.

(b) Program Design.—State agency programs shall be designed to serve migratory children of migratory agricultural workers or of migratory fishermen, handicapped children, and neglected and delinquent children (as described in subparts 1, 2, and 3, respectively, of part B of title I of the Elementary and Secondary Education Act of 1965) in accordance with section 554(a)(2) and the other applicable requirements of this chapter. The Secretary shall continue to use the definitions of "agricultural activity", "currently migratory child", and "fishing activity" which were in effect on June 30, 1982, in regulations prescribed under subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965. No additional definition of "migratory agricultural worker" or "migratory fisherman" may be applied after the date of enactment of this subsection to such subpart 1, except that such definition shall be modified to include children of migratory fishermen, if such children reside in a school district of more than 18,000 square miles and migrate a distance of 20 miles or more to temporary residences to engage in fishing activity.

(c) Program Description.—A local education agency may use funds received under this chapter only for programs and projects which are designed to meet the special educational needs of educationally deprived children identified in accordance with section 556(b)(2), and which are included in an application for assistance approved by the State educational agency. Such programs and projects may include the acquisition of equipment and instructional materials, employment of special instructional and counseling and guidance personnel, employment and training of teacher aides, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, the construction, where necessary, of school facilities, other expenditures authorized under title I of the Elementary and Secondary Education Act as in effect September 30, 1982, and planning for such programs and projects.

(d) Records and Information.—Each State educational agency shall keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter).

(e) Evaluation.—Each State educational agency shall—

(1) conduct an evaluation of the programs assisted under this chapter at least every two years and shall make public the results of that evaluation; and

(2) collect data on the race, age, and gender of children served by the programs assisted under this chapter and on the number of children served by grade-level under the programs assisted under this chapter.

(20 U.S.C. 3804) Enacted August 13, 1981, P.L. 97-35, sec. 555, 95 Stat. 465; amended Dec. 8, 1983, P.L. 98-211, sec. 1, 97 Stat. 1412; amended June 12, 1984, P.L. 98-312, sec. 5, 98 Stat. 234.

APPROVAL OF APPLICATIONS

Sec. 556. (a) Application by Local Educational Agency.—A local educational agency may receive a grant under this chapter for any fiscal year if it has on file with the State educational agency an application which describes the programs and projects to be conducted with such assistance for a period of not more than three years, and such application has been approved by the State educational agency.

(b) Application Assurances.—The application described in subsection (a) shall be approved if it provides assurances satisfactory to the State educational agency that the local educational agency will keep such records and provide such information to the State educational agency as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the State agency under this chapter), and that the programs and projects described—

(1)(A) are conducted in attendance areas of such agency having the highest concentrations of low-income children; or

(B) are located in all attendance areas of an agency which has a uniformly high concentration of such children;

(2) are based upon an annual assessment of educational needs which identifies educationally deprived children in all eligible attendance areas, requires, among the educationally deprived children selected, the inclusion of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs;

(3) are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served and are designed and implemented in consultation with parents and teachers of such children;

(4) will be evaluated in terms of their effectiveness in achieving the goals set for them, and that such evaluations shall include objective measurements of educational achievement in basic skills and a determination of whether improved performance is sustained over a period of more than one year, and that the results of such evaluation will be considered by such agency in the improvement of the programs and projects assisted under this chapter; and; and [1]

(5) make provision for services to educationally deprived children attending private elementary and secondary schools in accordance with section 557.

(c) Exemption From Targeting.—The requirements of subsection (b)(1) shall not apply in the case of a local educational agency with a total enrollment of less than one thousand children, but this subsection does not relieve such an agency from the responsibility to serve children under the assurances set forth in subsection (b)(2).

(d) Local Educational Agency Discretion.—Notwithstanding subsection (b)(1) of this section, a local educational agency shall have discretion to make educational decisions which are consistent with achieving the purposes of this chapter as set forth in this subsection, as follows:

(1) A local educational agency may designate any school attendance area in which at least 25 per centum of the children are from low-income families as an eligible school attendance area.

(2) A local educational agency may, with the approval of the State educational agency, designate as eligible (and serve) school attendance areas with substantially higher numbers or percentages of educationally deprived children before school attendance areas with higher concentrations of children from low-income families, but this provision shall not permit the provision of services to more school attendance areas than could otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of compensatory education services to educationally de-

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[1] Apparent error, see sec. 2(d) of P.L. 98–211, 97 Stat. 1413.

prived children from low-income families in project areas served by the local educational agency.

(3) Funds received under this chapter may be used for educationally deprived children who are in a school which is not located in an eligible school attendance area when the proportion of children from low-income families in average daily attendance in such school is substantially equal to the proportion of such children in an eligible school attendance area of such agency.

(4) If an eligible school attendance area or eligible school was so designated in accordance with subsection (b)(1)(A) in either of two preceding fiscal years, it may continue to be so designated for a single additional fiscal year even though it does not qualify in accordance with subsection (b)(1)(A).

(5) With approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this chapter, but (A) the number of children attending private elementary and secondary schools who receive services under this chapter shall be determined without regard to non-Federal compensatory education funds which serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this chapter shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

(6) A child who, in any previous year, was identified as being in greatest need of assistance, and who continues to be educationally deprived, but who is no longer identified as being in greatest need of assistance, may participate in a program or project assisted under this title for the current year.

(7) Educationally deprived children who begin participation in a program or project assisted under this chapter who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this chapter, may continue to participate in a program or project funded under this chapter for the remainder of such year.

(8) The local educational agency is not required to use funds under this chapter to serve educationally deprived children in greatest need of assistance if such children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this chapter.

(9) In the case of any school serving an attendance area that is eligible to receive services under this chapter and in which not less than 75 per centum of the children are from low-income families, funds received under this chapter may be used for a project designed to upgrade the entire educational program in that school in the same manner and only to the same extent as permitted under section 133(b) of the Elementary and Secondary Education Act of 1965 (but without regard to paragraph (4) of such section).

(10) Public school personnel paid entirely by funds made available under this chapter may be assigned limited, rotating, supervisory duties which are assigned to similarly situated personnel who are not paid with such funds, and such duties need not be limited to classroom instruction or to the benefit of children participating in programs or projects funded under this chapter. Such duties may not exceed the same proportion of total time as is the case with similarly situated personnel at the same school site, or 10 per centum of the total time, whichever is less.

(e) PARENTAL INVOLVEMENT.—For the purposes of complying with the assurances given pursuant to subsection (b)(3) with respect to consultation with parents of participating children, (1) a local educational agency shall convene annually a public meeting, to which all parents of eligible students shall be invited, to explain to parents the programs and activities provided with funds made available under this chapter, and (2) if parents desire further activities, the local educational agency may, upon request, provide reasonable support for such activities.

(20 U.S.C. 3805) Enacted August 13, 1981, P.L. 97-35, sec. 556, 95 Stat. 465; amended December 8, 1983, P.L. 98-211, secs. 2, 3, 4, 97 Stat. 1412-1414.

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

SEC. 557. (a) GENERAL REQUIREMENTS.—To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 555(c), 556(b) (1), (2), (3), and (4), and 558(b). Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

(b) BYPASS PROVISION.—(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall waive such requirements, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

(2) If the Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

(3)(A) When the Secretary arranges for services pursuant to this subsection, he shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this chapter.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).

(4)(A) The Secretary shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why such action should not be taken.

(B) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(c) Any bypass determination by the Secretary under title I of the Elementary and Secondary Education Act of 1965 prior to the effective date of this chapter shall remain in effect to the extent consistent with the purposes of this chapter.

(20 U.S.C. 3806) Enacted August 13, 1981, P.L. 97-35, sec. 557, 95 Stat. 466; amended December 8, 1983, P.L. 98-211, sec. 5, 97 Stat. 1415.

GENERAL PROVISIONS

SEC. 558. (a) MAINTENANCE OF EFFORT.—(1) Except as provided in paragraph (2), a local educational agency may receive funds under this chapter for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 per centum of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(2) The State educational agency shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which a local educational agency fails to meet the requirement of paragraph (1) by falling below 90 per centum of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to such local agency), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) The State educational agency may waive, for one fiscal year only, the requirements of this subsection if the State educational agency determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.

(b) Federal Funds to Supplement, Not Supplant Regular Non-Federal Funds.—A State educational agency or other State agency in operating its State level programs or a local educational agency may use funds received under this chapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter, and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection no State educational agency, other State agency, or local educational agency shall be required to provide services under this chapter outside the regular classroom or school program.

(c) Comparability of Services.—(1) A local educational agency may receive funds under this chapter only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this chapter. Where all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.

(2) A local educational agency shall be deemed to have met the requirements of paragraph (1) if it has filed with the State educational agency a written assurance that it has established—

(A) a districtwide salary schedule;

(B) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

Unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.

(d) Exclusion of Special State and Local Program Funds.—For the purposes of determining compliance with the requirements of subsections (b) and (c), a local educational agency may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children (which meets the requirements of section 131(c) of the Elementary and Secondary Education Act of 1965). For the purpose of determining compliance with the requirements of subsection (c), a local educational agency may exclude State and local funds expended for—

(1) bilingual education for children of limited English proficiency,

(2) special education for handicapped children or children with specific learning disabilities, and

(3) certain State phase-in programs as described in section 131(d) of the Elementary and Secondary Education Act of 1965.

(e) ALLOCATION OF FUNDS IN CERTAIN STATES.—Notwithstanding section 111(a)(3)(C) of the Elementary and Secondary Education Act of 1965, in any State in which a large number of local educational agencies overlap county boundaries, the State educational agency is authorized to make allocations of basic grants and special incentive grants directly to local educational agencies without regard to counties, if such allocations were made during fiscal year 1982, except that (1) precisely the same factors are used to determine the amount of such grants to counties, and (2) a local educational agency dissatisfied with such determination is afforded an opportunity for a hearing on the matter by the State educational agency.

(20 U.S.C. 3807) Enacted August 13, 1981, P.L. 97-35, sec. 558, 95 Stat. 468; amended December 8, 1983, P.L. 98-211, secs. 7, 8, 97 Stat. 1415.

NATIONAL ASSESSMENT OF COMPENSATORY EDUCATION ASSISTED UNDER THIS CHAPTER

SEC. 559. (a) The Secretary shall conduct a national assessment of compensatory education assisted under this chapter, through independent studies and analysis by the National Institute of Education. The assessment shall include descriptions and assessments of the impact of (1) services delivered, (2) recipients of services, (3) background and training of teachers and staff, (4) allocation of funds (to school sites), (5) coordination with other programs, (6) effectiveness of programs on student's basic and higher order academic skills, school attendance, and future education, and (7) a national profile of the way in which local educational agencies implement activities described under section 556(b). The National Institute of Education shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives in the design and implementation of the assessment required by this section. The National Institute of Education shall report to Congress the preliminary results of the assessment required by this section in January and July of 1986, and a final report shall be prepared and submitted to the Congress not later than January 1, 1987.

(b) Notwithstanding any other provision of law or regulation, such reports shall not be subject to any review outside of the Department of Education before their transmittal to the Congress, but the President and the Secretary may make such additional recommendations to the Congress with respect to the assessment as they deem appropriate.

(20 U.S.C. 3808) Enacted December 8, 1983, P.L. 98-211, sec. 22, 97 Stat. 1418.

CHAPTER 3—GENERAL PROVISIONS

FEDERAL REGULATIONS

SEC. 591. (a) The Secretary is authorized to issue regulations—

(1) relating to the discharge of duties specifically assigned to the Secretary under this subtitle;

(2) relating to proper fiscal accounting for funds appropriated under this subtitle and the method of making payments authorized under this subtitle; and

(3) which are deemed necessary to reasonably insure that there is compliance with the specific requirements and assurances required by this subtitle.

(b) In all other matters relating to the details of planning, developing, implementing, and evaluating programs and projects by State and local educational agencies the Secretary shall not issue regulations, but may consult with appropriate State, local, and private educational agencies and, upon request, provide technical assistance, information, and suggested guidelines designed to promote the development and implementation of effective instructional programs and to otherwise assist in carrying out the purposes of this subtitle.

(c) Regulations issued pursuant to this subtitle shall not have the standing of a Federal statute for the purposes of judicial review.

(d) Nothing in this subtitle shall be interpreted (1) to authorize State regulations, issued pursuant to procedures as established by State law, applicable to local educational agency programs or projects funded under this subtitle, except as related to State audit and financial responsibilities, or (2) to encourage, preempt, or prohibit regulations issued pursuant to State law which are not in conflict with the provisions of this subtitle. The imposition of any State rule or policy relating to the administration and operation of programs funded by this subtitle (including those based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State imposed requirement.

(20 U.S.C. 3871) Enacted August 13, 1981, P.L. 97-35, sec. 591, 95 Stat. 480; amended December 8, 1983, P.L. 98-211, sec. 15, 97 Stat. 1416.

WITHHOLDING OF PAYMENTS

SEC. 592. (a) Whenever the Secretary after reasonable notice to any State educational agency and an opportunity for a hearing, finds that there has been a failure to comply substantially with any assurances required to be given or conditions required to be met under this subtitle the Secretary shall notify such agency of these findings and that beginning sixty days after the date of such notification, further payments will not be made to the State under this subtitle, or affected chapter thereof (or, in his discretion, that the State educational agency shall reduce or terminate further payments under the subtitle or affected chapter thereof, to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, (1) no further payments shall be made to the State under the subtitle or affected chapter thereof, or (2) payments by the State educational agency under the subtitle or affected chapter thereof shall be limited to local educational agencies and State agencies not affected by the failure, or (3) payments to particular local educational agencies shall be reduced, as the case may be. A transcript or recording shall be made of any hearing conducted under this subsection and shall be available for inspection by any person.

(b) Upon submission to a State of a notice under subsection (a) that the Secretary is withholding payments, the Secretary shall take such action as may be necessary to bring his action to the attention of the public within the State.

(20 U.S.C. 3872) Enacted August 13, 1981, P.L. 97–35, sec. 592, 95 Stat. 480; amended December 8, 1983, P.L. 98–211, sec. 16, 97 Stat. 1417.

JUDICIAL REVIEW

SEC. 593. (a) If any State is dissatisfied with the Secretary's action under section 592(a), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall act to suspend any withholding of funds by the Secretary pending the judgment of the court and prior to a final action on any review of such judgment. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(b) A State educational agency and a local educational agency shall be presumed to have complied with this subtitle, but the findings of fact by the Secretary, if supported by the weight of evidence, may overcome such presumption. The court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings.

(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 3873) Enacted August 13, 1981, P.L. 97–35, sec. 593, 95 Stat. 481; amended December 8, 1983, P.L. 98–211, sec. 17, 97 Stat. 1417.

AVAILABILITY OF APPROPRIATIONS

SEC. 594. Notwithstanding any other provision of law, unless expressly in limitation of this section, funds appropriated in any fiscal year to carry out activities under this subtitle shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the succeeding fiscal year.

(20 U.S.C. 3874) Enacted August 13, 1981, P.L. 97–35, sec. 594, 95 Stat. 481.

DEFINITIONS

SEC. 595. (a) Except as otherwise provided herein as used in this subtitle—

(1) the term "State" means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands;

(2) the term "Secretary" means the Secretary of Education;

(3) the term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools;

(4) the term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school;

(5) the term "parent" includes a legal guardian or other person standing in loco parentis;

(6) the term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade twelve;

(7) the term "elementary school" means a day or residential school which provides elementary education, as determined under State law, and the term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade twelve;

(8) the term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities;

(9) the term "equipment" includes machinery, utilities, and building equipment and any necessary enclosure or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials; and

(10) the term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar fa-

cilities intended primarily for exhibitions for which admission is to be charged to the general public.

(b) Any term used in provisions referenced by section 554 and not defined in this section shall have the same meaning as that term was given in title I of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

(20 U.S.C. 3875) Enacted August 13, 1981, P.L. 97-35, sec. 595, 95 Stat. 481.

APPLICATION OF OTHER LAWS

SEC. 596. (a) Except as otherwise specifically provided by this section, the General Education Provisions Act shall apply to the programs authorized by this subtitle.

(b) The following provisions of the General Education Provisions Act shall be superseded by the specified provisions of this subtitle with respect to the programs authorized by this subtitle:

(1) Section 408(a)(1) of the General Education Provisions Act is superseded by section 591(a) of this subtitle.

(2) Section 426(a) of such Act is superseded by section 591(b) of this subtitle.

(3) Section 427 of such Act is superseded by section 556(b)(3) of this subtitle.

(4) Section 430 of such Act is superseded by sections 556(a) and 564(b) of this subtitle.

(5) Section 431A of such Act is superseded by section 558(a) of this subtitle.

(6) Section 453 of such Act is superseded by section 592 of this subtitle.

(7) Section 455 of such Act is superseded by section 593 of this subtitle with respect to judicial review of withholding of payments.

(c) Sections 434, 435, and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to the programs authorized by this subtitle and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this subtitle.

(20 U.S.C. 3876) Enacted August 13, 1981, P.L. 97-35, sec. 596, 95 Stat. 482; amended December 8, 1983, P.L. 98-211, sec. 18, 97 Stat. 1417.

[NOTE.—Section 25(b) of Public Law 98-211 (97 Stat. 1419), as amended by section 708 of the Education Amendments of 1984, contained the following provision concerning compliance:

"(b) With respect to the period beginning July 1, 1982, and ending June 30, 1984, no recipient of funds under the Education Consolidation and Improvement Act of 1981 shall be held to have expended such funds in violation of the requirements of such Act if such funds are expended either in accordance with such Act as in effect prior to the date of enactment of this Act or in accordance with such Act as amended by this Act."]

PART I—ELEMENTARY AND SECONDARY PROGRAMS

Elementary and Secondary Education Act of 1965

TITLE I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN[1]

PART A—PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

. . .

Subpart 1—Basic Grants

GRANTS—AMOUNT AND ELIGIBILITY

SEC. 111. (a) AMOUNT OF GRANTS.—(1) There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 per centum of the amount appropriated for such year for payments to States under part E (other than payments under such part to jurisdictions excluded from the term "State" by this subsection, and payments pursuant to section 156), and there is authorized to be appropriated such additional sums as will assure at least the same level of funding under this title as in fiscal year 1976 for Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and to the Secretary of the Interior for payments pursuant to paragraphs (1) and (2) of subsection (d). The amount appropriated pursuant to this paragraph shall be allotted by the Commissioner (A) among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsecton (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purpose of this title.

(2)(A) In any case in which the Commissioner determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3) be determined by multiplying the number of children counted under subsection (c) by 40 per centum of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (i) if the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, such amount shall be 80 per centum of the average per pupil expenditure in the United States, or (ii) if the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, such amount shall be 120 per centum of the average per pupil expenditure in the United States.

(B) In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under subparagraph (A) for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with the basic criteria prescribed by the Commissioner.

(C) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year (exclusive of any amount received under paragraph (3)(D) shall be the multiplying the number of children counted under subsection (c) for Puerto Rico by the product of—

(i) the percentage determined under the preceding sentence and

(ii) 32 per centum of the average per pupil expenditure in the United States.

(3)(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Commissioner, which does assume such responsibility shall be eligible to receive such portion of the allocation.

(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this title.

(C) In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Commissioner for authority during any particular fiscal year to make the allocations under this part (other than section 117) directly to local educational agencies without regard to the counties. If the Commissioner approves an application of a State educational agency for a particular year under this subparagraph, the State educational agency shall provide assurances that such allocations will be made using precisely the same factors for determining a grant as are used under this part and that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Commissioner for a final determination.

(D)(i) From one-half of any amount made available for this subpart for any fiscal year in excess of the amount made available for this subpart for fiscal year 1979, there shall be allotted to each State an amount which bears the same ratio to such excess as the product of—

(I) the number of children in such State aged five to seventeen, inclusive, from families below 50 per centum of the median national income for four-person families from the 1975 survey of income and education conducted by the Bureau of the Census,

multiplied by—

(II) 40 per centum of the amount determined under the second sentence of paragraph (2)(A) and, in the case of Puerto

Rico, the product determined under subparagraph (C) (i) and (ii) of this paragraph.

bears to the sum of such products for all the States.

(ii) In any case in which the Commissioner finds that a State's percentage decrease in children from low-income families exceeds 25 per centum between the 1970 decennial census, as adjusted, and the 1975 survey of income and education, the Commissioner shall allocate funds based on the most current valid data available or based on a resurvey of the affected State by the Bureau of the Census.

(iii) From the amount allotted to each State under division (i), the amount which each local educational agency in that State shall be eligible to receive under this subparagraph shall be an amount which bears the same ratio to the total amount allotted to such State under this subparagraph as the amount such local educational agency receives under paragraph (2) bears to the total amount of funds made available to local educational agencies in such State under such paragraph.

(E) From the remaining one-half of any amount made available for this subpart for any fiscal year in excess of the amount made available for this subpart for fiscal year 1979 after the application of subparagraph (D), there shall be allotted to each State an amount determined in accordance with paragraph (2) of this subsection.

(4) For purposes of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b) MINIMUM NUMBER OF CHILDREN TO QUALIFY.—A local educational agency shall be eligible for a basic grant for a fiscal year under this subpart only if it meets the following requirements with respect to the number of children counted under subsection (c):

(1) In any case (except as provided in paragraph (3)) in which the Commissioner determines that satisfactory data for the purpose of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least ten.

(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least ten.

(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Commissioner has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies or all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Commissioner for the purposes of this subsection.

(c) CHILDREN TO BE COUNTED.—(1)(A) The number of children to be counted for purposes of this section, other than for subsection (a)(3)(D), is the aggregate of—

(i) the number of children aged five to seventeen, inclusive, in the school district of the local educational agency from fami-

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lies below the poverty level as determined under paragraph (2)(A),

(ii) the number of children aged five to seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B), subject to subparagraph (B) of this paragraph, and

(iii) the number of children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part B for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

(B) For the purpose of division (ii) of subparagraph (A) of this paragraph the number of children aged five through seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B) shall be reduced by one-third for fiscal year 1979; except that such reduction shall not be applicable with respect to determinations made under section 117(b) of the number of children to be counted under this subsection.

(2)(A) For the purposes of this section, the Commissioner shall determine the number of children aged five to seventeen, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Commissioner shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census.

(B) For purposes of this section, the Secretary shall determine the number of children aged five to seventeen, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to him before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to him at the time of such determination. The Secretary of Health and Human Services shall collect and transmit the information required by this subparagraph to the Secretary not later than January 1 of each year.

(C) When requested by the Commissioner, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under subparagraph (A) of this paragraph) in each county or school district, and the Commissioner is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

(d) PROGRAM FOR INDIAN CHILDREN.—(1) From the amount allotted for payments to the Secretary of the Interior under clause (B)(i) in the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Commissioner determines will best carry out the purposes of this title with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 per centum of (A) the average per pupil expenditure in the State in which the agency is located or (B) 120 per centum of such expenditure in the United States, whichever is the greater.

(2) The amount allotted for payments to the Secretary of the Interior under clause (B)(ii) in the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Commissioner the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such payment shall be made pursuant to an agreement between the Commissioner and the Secretary containing such assurances and terms as the Commissioner determines will best achieve the purposes of this title. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of subpart 3 of this part and that the Department of the Interior will comply in all other respects with the requirements of this title, and (B) provision for carrying out the applicable provisions of subpart 3 of this part and sections 171 and 172.

(20 U.S.C. 2711) Enacted Apr. 11, 1965, P.L. 89-10, sec. 2, 79 Stat. 28; amended July 21, 1965, P.L. 89-77, sec. 3, 79 Stat. 243; amended Nov. 1, 1965, P.L. 89-313, sec. 6(a), 79 Stat. 1161, amended Nov. 3, 1966, P.L. 89-750, secs. 102, 103(a), 104-108, 113(b), 117, 80 Stat. 1191-1198; redesignated and amended Jan. 2, 1968, P.L. 90-247, secs. 101, 103(a), 104, 105, 107, 108(a), 81 Stat. 783-787; amended Oct. 16, 1968, P.L. 90-576, sec. 307, 82 Stat. 1097; amended Apr. 13, 1970, P.L. 91-230, secs. 101(b), 103-107, 113, 84 Stat. 121-124, 126; amended and subsection 103(a)(1)(C) added June 23, 1972, P.L. 92-318; sec. 411(b), 86 Stat. 338; amended Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 488, 491; amended Apr. 21, 1976, P.L. 94-273, sec. 49(a),(b), and (c), 90 Stat. 382; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2153-2158; amended Oct. 17, 1979, P.L. 96-88, sec. 508(k), 93 Stat. 694.

TREATMENT OF EARNINGS FOR PURPOSES OF AID TO FAMILIES WITH DEPENDENT CHILDREN

SEC. 112. Notwithstanding the provisions of title IV of the Social Security Act, a State plan approved under section 402 of such Act shall provide that for a period of not less than twelve months, and may provide that for a period of not more than twenty-four months, the first $85 earned by any person in any month for services rendered to any program assisted under this title of this Act shall not be regarded (1) in determining the need of such person under such approved State plan or (2) in determining the need for any other individual under such approved State plan.

(20 U.S.C. 2712) Enacted Nov. 3, 1966, P.L. 89-750, sec. 109, 80 Stat. 1195; redesignated Jan. 2, 1968, P.L. 90-247, secs. 108(a)(4), 110, 81 Stat. 786, 787; redesignated Apr. 13, 1970, P.L. 91-230, sec. 113(b)(4), 84 Stat. 126; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2158.

Subpart 2—Special Grants

SPECIAL INCENTIVE GRANTS

SEC. 116. (a) ELIGIBILITY.—(1) Each local educational agency that is eligible to receive a payment under section 111 for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if it is located in a State which has in effect for that fiscal year a State program meeting the requirements of paragraph (2) under which financial assistance is provided to meet the special education needs of educationally deprived children.

(2) A State program meets the requirements of this subsection if, under State law—

(A) the program meets the requirements of section 131(c); and

(B) not less than 50 per centum of the funds expended under the program in any school district of any local educational agency in the State in the fiscal year preceding any fiscal year in which the State receives a payment under this subpart is expended in school attendance areas of such agencies having high concentrations of children from low-income families.

(b) AMOUNT OF GRANTS.—(1) Except as provided in paragraph (3), the aggregate amount to which the local educational agencies in a State are entitled under this section for any fiscal year shall be 50 per centum of the amount of State funds expended, in the most recent fiscal year for which data are available, under a State program meeting the requirements of paragraph (2) of subsection (a) of this section.

(2) The amount of the additional grant for each local educational agency in a State under this section for any fiscal year shall bear the same ratio to the amount allocated to such State under subsection (c) of this section as the amount allocated to such local educational agency under section 111 of this title for such fiscal year bears to the aggregate amount allocated to all local educational agencies in the State under section 111 for such fiscal year.

(3) The aggregate amount which the local educational agencies in a State shall be eligible to receive under this section for any fiscal year shall not exceed 10 per centum of the aggregate amount

which all local educational agencies in such State are eligible to receive under section 111 of this title for such fiscal year.

(4) Each State which desires to receive payments under this section shall develop a system for determining the data required by subparagraph (2)(B) of subsection (a) of this section relating to the percentage of State funds expended in school attendance areas having high concentrations of children from low-income families and required by paragraph (1) of this subsection relating to the amount of State funds expended under the State program referred to in that paragraph. The State shall submit to the Commissioner such information as the Commissioner may request concerning that system.

(c) PAYMENTS; USE OF FUNDS.—(1) Except as provided in paragraph (3), the Commissioner shall pay to each State for each fiscal year the aggregate amount to which the local educational agencies in such State are entitled under subsection (b) after any ratable reductions under subsection (d).

(2) The total amount to which the local educational agencies in a State are entitled under this section for any fiscal year shall be added to the amount paid to such State under section 191 for such year. From the amount paid to it under this subsection, the State shall distribute to each local educational agency of the State the amount of its additional grant as determined under subsection (2).

(3) Whenever the expenditures made by a State in accordance with subsection (a) in a fiscal year equal or exceed expenditures in the preceding fiscal year, the amount paid to such State under this section shall, subject to subsection (d), not be less than the amount paid to such State under this section in the preceding fiscal year, and the total of any increases required under this paragraph shall be derived by proportionately reducing the amount paid to States which were not entitled to a payment under this section in the preceding fiscal year, except that the amount paid to a State under this section for any fiscal year shall not exceed the maximum amount to which such State is entitled for such fiscal year under paragraph (1) of subsection (b).

(4) The amount paid to a local educational agency under this part shall be used by such agency for activities undertaken pursuant to its application submitted under section 121 and shall be subject to all other requirements in subpart 3 of this part.

(d) RATABLE REDUCTIONS.—If the sums appropriated pursuant to subsection (e) for a fiscal year are not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under this section, the amount to be paid such agencies shall be ratably reduced to the extent necessary to bring such payments within the limits of the amounts so appropriated. In case additional funds become available for making payments under this section for that year, such reduced amounts shall be increased on the same basis that they were reduced.

(e) APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this section such sums as may be necessary for fiscal year 1980 and for the three succeeding fiscal years.

(20 U.S.C. 2721) Enacted Apr. 11, 1965, P.L. 89-10, sec. 2, 79 Stat. 30; amended Nov. 3, 1966, P.L. 89-750, secs. 103(b), 108(b)(1), 2, 110, 111(a)-(e), 80 Stat. 1192, 1195, 1196; redesignated and amended Jan. 2, 1968, P.L. 90-247, secs. 103(b), 106, 108(a)(2),

109, 110, 81 Stat. 783, 784, 786, 787; redesignated and amended Apr. 13, 1970, P.L. 91–230, secs. 108, 109(a), 110, 111(b), 113(b)(3) and (4), 84 Stat. 124–126, 128; amended June 23, 1972, P.L. 92–318, sec. 507(a) and (b), 86 Stat. 352; Aug. 21, 1974, P.L. 93–380, sec. 101, 88 Stat. 496, 497; amended Oct. 12, 1976, P.L. 94–482, sec. 501, 90 Stat. 2236; redesignated and amended Nov. 1, 1978, P.L. 95–561, sec. 101(a), 92 Stat. 2158, 2159; amended Aug. 6, 1979, P.L. 96–46, sec. 1(1), 93 Stat. 338.

GRANTS FOR LOCAL EDUCATIONAL AGENCIES IN COUNTIES WITH ESPECIALLY HIGH CONCENTRATIONS OF CHILDREN FROM LOW-INCOME FAMILIES

SEC. 117. (a) PURPOSE.—It is the purpose of this section to provide additional assistance to local educational agencies in counties with especially high concentrations of children from low-income families to enable local educational agencies in such counties to provide more effective programs of instruction, especially in the basic skills of reading, writing, and mathematics, to meet the special educational needs of educationally deprived children.

(b) ELIGIBILITY FOR AND AMOUNT OF SPECIAL GRANTS.—(1) Each county, in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, which is eligible for a grant under this title for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if—

(A) the number of children counted under section 111(c) of this title for local educational agencies in such county for the preceding fiscal year exceeds five thousand, or

(B) the number of children counted under section 111(c) exceeds 20 per centum of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county in that fiscal year,

except that no such State shall receive less than one-quarter of 1 per centum of the sums appropriated under subsection (d) for such section for such fiscal year.

(2) For each county in which there are local educational agencies eligible to receive an additional grant under this section for any fiscal year the Commissioner shall determine the product of—

(A) the number of children in excess of five thousand counted under section 111(c) for the preceding fiscal year or the number of children counted under that section in excess of 20 per centum of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county for that preceding fiscal year, whichever is greater, and

(B) the quotient resulting from the division of the amount determined for those agencies under section 111(a)(2) of this title for the fiscal year for which the determination is being made divided by the total number of children counted under section 111(c) for that agency for the preceding fiscal year.

(3) The amount of the additional grant to which an eligible county is entitled under this section for any fiscal year shall be an amount which bears the same ratio to the amount appropriated under subsection (d) for that fiscal year as the product determined under paragraph (2) for such county for that fiscal year bears to the sum of such products for all counties in the United States for that fiscal year.

PART B—PROGRAMS OPERATED BY STATE AGENCIES

Subpart 1—Programs for Migratory Children

GRANTS—ENTITLEMENT AND AMOUNT

SEC. 141. (a) ENTITLEMENT.—A State educational agency or a combination of such agencies shall, upon application, be entitled to receive a grant for any fiscal year under this part to establish or improve, either directly or through local educational agencies, programs of education for migratory children of migratory agricultural workers or of migratory fishermen which meet the requirements of sements, procedural and substantive rules, opinions, policy statements and interpretations and indices to and amendments of the foregoing, and in particular, whether or not such items are required under section 552 of title 5, United States Code to be pubhe average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by (i) the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State full time, and (ii) the full-time equivalent of the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State part time, as determined by the Commissioner in accordance with regulations, except that if, in the case of any State, such amount exceeds the amount required under section 142, the Commissioner shall allocate such excess, to the extent necessary, to other States, whose total of grants under this sentence would otherwise be insufficient for all such children to be served in such other States. In determining the full-time equivalent number of migratory children who are in a State during the summer months, the Commissioner shall adjust the number so determined to take into account the special needs of those children for summer programs and the additional costs of operating such programs during the summer. In determining the number of migrant children for the purposes of this section the Commissioner shall use statistics made available by the migrant student record transfer system or such other system as he may determine most accurately and fully reflects the actual number of migrant students.

(2) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico

(4) For the purposes of this section, the Commissioner shall determine the number of children counted under section 111(c) for any county, and the total number of children aged five to seventeen, inclusive, in school districts of local educational agencies in such county, on the basis of the most recent satisfactory data available at the time the entitlement for such county is determined under section 111.

(5) Funds allocated to counties under this part shall be allocated by the State educational agency, pursuant to regulations established by the Commissioner, among the several local educational agencies whose school districts lie (in whole or in part) within the county on the basis of the current distribution in the county of children aged five to seventeen, inclusive, from low-income families (using a poverty level selected by the State educational agency consistent with the purposes of this title) as determined on the basis of the available data which such State educational agency determines best to reflect the current distribution in the county of children aged five to seventeen, inclusive, from low-income families, except that in determining the number of such children in any local educational agency in which less than 20 per centum of the children are from low-income families, each such child shall be counted as a fraction in which the numerator is the percentage of low-income children in the school district of that agency and the denominator is 20.

(c) PAYMENTS; USE OF FUNDS.—(1) The total amount to which the counties in a State are entitled under this section for any fiscal year shall be added to the amount paid to that State under section 191 for such year. From the amount paid to it under this section, the State shall distribute to local educational agencies in each county of the State the amount (if any) to which it is entitled under this section.

(2) The amount paid to a local educational agency under this section shall be used by that agency for activities undertaken pursuant to its application submitted under section 121 and shall be subject to the other requirements in subpart 3 of this part.

(d) APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this section $400,000,000 for fiscal year 1979, and such sums as may be necessary for each of the four succeeding fiscal years.

(20 U.S.C. 2722) Enacted Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2159-2161.

is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this section for a fiscal year shall be the amount arrived at by multiplying the number of such migrant children in Puerto Rico by the product of—

(A) the percentage determined under the preceding sentence, and

(B) 32 per centum of the average per pupil expenditure in the United States.

(20 U.S.C. 2761) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 492-494; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2177, 2178.

PROGRAM REQUIREMENTS

SEC. 142. (a) REQUIREMENTS FOR APPROVAL OF APPLICATION.—The Commissioner may approve an application submitted under section 141(a) only upon his determination—

(1) that payments will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children of migratory agricultural workers or of migratory fishermen, and to coordinate such programs and projects with similar programs and projects in other States, including the transmittal of pertinent information with respect to school records of such children;

(2) that in planning and carrying out programs and projects there has been and will be appropriate coordination with programs administered under part B of title III of the Economic Opportunity Act of 1964 and under section 303 of the Comprehensive Employment and Training Act;

(3) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of section 556 (other than subsection (b)(1)) and section 558 of the Education Consolidation and Improvement Act of 1981;

(4) that, in planning and carrying out programs and projects at both the State and local educational agency level, there has been and will be appropriate consultation with parent advisory councils established in accordance with regulations of the Commissioner (consistent with the requirements of section 125(a)); and

(5) that, in planning and carrying out programs and projects, there has been adequate assurance that provision will be made for the preschool education needs of migratory children of migratory agricultural workers or of migratory fishermen, whenever such agency determines that compliance with this paragraph will not detract from the operation of programs and projects described in paragraph (1) of this subsection after considering funds available for this purpose.

(b) CONTINUATION OF MIGRANT STATUS.—For purposes of this subpart, with the concurrence of his parents, a migratory child of a migratory agricultural worker or of a migratory fisherman shall be deemed to continue to be such a child for a period, not in excess of five years, during which he resides in the area served by the agency carrying on a program or project under this section. Such children who are presently migrant, as determined pursuant to

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regulations of the Commissioner, shall be given priority in this consideration of programs and activities contained in applications submitted under this section.

(c) By-Pass Provision.—If the Commissioner determines that a State is unable or unwilling to conduct educational programs for migratory children of migratory agricultural workers or of migratory fishermen, or that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, he may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in one or more States, and for this purpose he may use all or part of the total of grants available for any such State under this section.

(20 U.S.C. 2762) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 492-494; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2178, 2179; amended Aug. 6, 1979; P.L. 96-46, sec. 1(7) and (8), 93 Stat. 338; amended Dec. 8, 1983, P.L. 98-211, sec. 19(a), 97 Stat. 1418.

COORDINATION OF MIGRANT EDUCATION ACTIVITIES

Sec. 143. (a) Activities Authorized.—The Commissioner is authorized to make grants to, or enter into contracts with, State educational agencies to operate a system for the transfer among State and local educational agencies of migrant student records and to carry out other activities, in consultation with the States, to improve the interstate and intrastate coordination among State and local educational agencies of the educational programs available for migratory students.

(b) Availability of Funds.—The Commissioner shall, from the funds appropriated for carrying out this subpart, reserve for purposes of this section for any fiscal year an amount which shall not be less than $6,000,000 nor more than 5 per centum of the amount so appropriated.

(20 U.S.C. 2763) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 492-494; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2179; amended Aug. 6, 1979, P.L. 96-46, sec. 1(9), 93 Stat. 338.

Subpart 2—Programs for Handicapped Children

AMOUNT AND ELIGIBILITY

Sec. 146. (a) Eligibility for Grant.—A State agency which is directly responsible for providing free public education for handicapped children (as that term is defined in section 602(1) of the Education of the Handicapped Act), shall be eligible to receive a grant under this subpart for any fiscal year.

(b) Amount of Grant.—(1) Except as provided in sections 156 and 157, the grant which a State agency referred to in subsection (a) (other than the agency for Puerto Rico) shall be eligible to receive under this section shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States), multiplied by the number of such handicapped children in average daily attendance, as determined by the Commissioner, at schools for handicapped children operated or supported by the State agency, including schools providing special education for handicapped children under contract or other arrangement with such State agency, in the most recent fiscal year for which satisfactory data are available.

(2) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such handicapped children in Puerto Rico by the product of—

(A) the percentage determined under the preceding sentence, and

(B) 32 per centum of the average per pupil expenditure in the United States.

(c) COUNTING OF CHILDREN TRANSFERRING FROM STATE TO LOCAL PROGRAMS.—In the case where a child described in subsection (a) leaves an educational program for handicapped children operated or supported by the State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (b) if (1) he continues to receive an appropriately designed educational program and (2) the State agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State agency under this section which are attributable to such child, to be used for the purposes set forth in section 147.

(20 U.S.C. 2771) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 491, 492; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2180.

PROGRAM REQUIREMENTS

SEC. 147. A State shall use the payments made under this subpart only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of handicapped children. Such programs and projects shall be administered and carried out in a manner consistent with section 556 (other than subsection (b)(1)) and section 558 (other than subsection (c)) of the Education Consolidation and Improvement Act of 1981. The State agency shall provide assurances to the Commissioner that each such child in average daily attendance counted under subsection (b) of section 146 will be provided with such a program, commensurate with his special needs, during any fiscal year for which such payments are made.

(20 U.S.C. 2772) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 491, 492; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2180, 2181; amended Aug. 6, 1979, P.L. 96-46, sec. 1(10), 93 Stat. 339; amended Dec. 8, 1983, P.L. 98-211, sec. 19(a), 97 Stat. 1418.

Subpart 3—Programs for Neglected and Delinquent Children

AMOUNT AND ENTITLEMENT

Sec. 151. (a) Entitlement to Grants.—A State agency which is directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this subpart for any fiscal year (but only if grants received under this subpart are used only for children in such institutions).

(b) Amount of Grant.—(1) Except as provided in sections 156 and 157, the grant which such an agency (other than the agency for Puerto Rico) shall be eligible to receive shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by the number of such neglected or delinquent children in average daily attendance, as determined by the Commissioner, at schools for such children operated or supported by that agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available.

(2) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such neglected or delinquent children in Puerto Rico by the product of—

(A) the percentage determined under the preceding sentence, and

(B) 32 per centum of the average per pupil expenditure in the United States.

(20 U.S.C. 2781) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 494; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2181.

PROGRAM REQUIREMENT

Sec. 152. (a) Use of Payments.—A State agency shall use payments under this subpart only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of children in institutions for neglected or delinquent children or in adult correctional institutions. Such programs and projects shall be designed to support educational services supplemental to the basic education of such children which must be provided by the State, and such programs and projects shall be administered and carried out in a manner consistent with section 556 (other than subsection (b)(1)) and section 558 (other than subsection (c)) of the Education Consolidation and Improvement Act of 1981.

(b) THREE-YEAR PROJECTS.—Where a State agency operates programs under this title in which children are likely to participate for more than one year, the State educational agency may approve the application for a grant under this subpart for a period of more than one year, but not to exceed three years.

(20 U.S.C. 2782) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 494; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2181, 2182; amended Aug. 6, 1979, P.L. 96-46, sec. 1(11), 93 Stat. 339; amended Dec. 8, 1983, P.L. 98-211, sec. 19(a), 97 Stat. 1418.

TRANSITION SERVICES

SEC. 153. (a) GRANTS AUTHORIZED.—The Commissioner is authorized to make grants to State and local educational agencies to support projects to facilitate the transition of children from State operated institutions for neglected and delinquent children into locally operated programs. Grants under this section shall be used to provide special educational services for such children in schools other than State operated institutions.

(b) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated for the purposes of this section for any fiscal year, not to exceed 5 per centum of the amount State agencies are entitled to receive under section 151 for that year.

(20 U.S.C. 2783) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 494; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2182.

Subpart 4—General Provisions for State Operated Programs

RESERVATION OF FUNDS FOR TERRITORIES

SEC. 156. There is authorized to be appropriated for each fiscal year for purposes of each of subparts 1, 2, and 3 of this part, an amount equal to not more than 1 per centum of the amount appropriated for such year for such subparts, for payments to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands under each such subpart. The amounts appropriated for each such subpart shall be allotted among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for such grants, based on such criteria as the Commissioner determines will best carry out the purposes of this title.

(20 U.S.C. 2791) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 494; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2182.

MINIMUM PAYMENTS FOR STATE OPERATED PROGRAMS

SEC. 157. No State shall receive in any fiscal year prior to October 1, 1983, pursuant to subpart 1, 2, or 3 of this part an amount which is less than 85 per centum of the amount which that State received in the prior fiscal year pursuant to the comparable sections of this title as in effect immediately preceding the enactment of the Education Amendments of 1978 or the comparable subpart of this part, whichever was in effect for such prior fiscal year, and, for any fiscal year ending prior to October 1, 1982, no State shall receive, pursuant to subpart 1 of this part, an amount which is less than 100 per centum of the amount that State received in the prior fiscal year pursuant to the comparable section of this title as in effect immediately prior to the enactment of the Education Amendments of 1978 or under subpart 1 of this part, whichever was in effect for such prior fiscal year.

(20 U.S.C. 2792) Enacted Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 495; amended Apr. 21, 1976, P.L. 94-273, sec. 3(8), 90 Stat. 376; amended Oct. 12, 1976, P.L. 94-482, secs. 501(b)(1)(a), 501(o), 90 Stat. 2236, 2238; amended Sept. 24, 1977, P.L. 95-112, sec. 2(a)(2), 91 Stat. 911; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2182, 2183.

PART E—PAYMENTS

PAYMENT METHODS

SEC. 191. The Commissioner shall, from time to time pay to each State, in advance or otherwise, the amount which it and the local educational agencies of that State are eligible to receive under this title. Such payments shall take into account the extent (if any) to which any previous payment to such State educational agency under this title (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it.

(20 U.S.C. 2841) Enacted Apr. 11, 1965, P.L. 89-10, sec. 2, 79 Stat. 32; amended Nov. 1, 1965, P.L. 89-313, sec. 7(a), 79 Stat. 1162; amended Nov. 3, 1966, P.L. 89-750, secs. 103(c)(2), 108(b)(3), 112, 113(a), 80 Stat. 1193, 1195, 1197; redesignated and amended Jan. 2, 1968, P.L. 90-247, secs. 102, 103(c), 108(a)(2), 110, 81 Stat. 783, 786, 787; redesignated and amended Apr. 13, 1970, P.L. 91-230, secs. 113(b)(3), (4), (8), 114, 84 Stat. 126, 129, 130; amended Oct. 12, 1976, P.L. 94-482, sec. 323(a)(1), 90 Stat. 2217; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2195.

AMOUNT OF PAYMENTS TO LOCAL EDUCATIONAL AGENCIES

SEC. 192. From the funds paid to it pursuant to section 191 each State educational agency shall distribute to each local educational agency of the State which is eligible to receive a grant under this title and which has submitted an application approved pursuant to section 121 the amount for which such application has been approved, except that the amount shall not exceed the amount determined for that agency under this title.

(20 U.S.C. 2842) Enacted Apr. 11, 1965, P.L. 89-10, sec. 2, 79 Stat. 32; amended Nov. 1, 1965, P.L. 89-313, sec. 7(a), 79 Stat. 1162; amended Nov. 3, 1966, P.L. 89-750, secs. 103(c)(2), 108(b)(3), 112, 113(a), 80 Stat. 1193, 1195, 1197; redesignated and amended Jan. 2, 1968, P.L. 90-247, secs. 102, 103(c), 108(a)(2), 110, 81 Stat. 783, 786, 787; redesignated and amended Apr. 13, 1970, P.L. 91-230, secs. 113(b)(3), (4), (8), 114, 84 Stat. 126, 129, 130; amended Oct. 12, 1976, P.L. 94-482, sec. 323(a)(1), 90 Stat. 2217; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2195.

ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS

SEC. 193. (a) ADJUSTMENT ALLOCATION.—If the sums appropriated for any fiscal year for making the payments provided in this title other than amounts appropriated for subpart 2 of part A are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this title for such year, the amount available for each grant to a State agency eligible for a grant under subpart 1, 2, or 3 of part B shall be equal to the total amount of the grant as computed under each such subpart. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under subpart 1 of part A of this title for such year, the allocations to such agencies shall, subject to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 per centum of its allocation under subpart 1 of the part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 85 per centum of its allocation for such year.

(b) ADDITIONAL FUNDS ALLOCATION.—In case additional funds become available for making payments under this title for that year, allocations that were reduced pursuant to subsection (a) shall be increased on the same basis that they were reduced. In order to permit the most effective use of all appropriations made to carry out this title, the Commissioner may set dates by which (1) State educational agencies must certify to him the amounts for which the applications of educational agencies have been or will be approved by the State and (2) State educational agencies referred to in subpart 1 of part B must file applications. If the maximum grant a local educational agency would receive (after any ratable reduction which may have been required under the first sentence of subsection (a) of this section) is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Commissioner, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available shall be made by the State educational agency in furtherance of the purposes of this title in accordance with criteria prescribed by the Commissioner which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of section 111(a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding two sentences of this section, such excess amounts shall be distributed among the other States as the Commissioner shall prescribe for use by local educational agencies in such States for the purposes of this title in such manner as the respective State educational agencies shall prescribe.

(20 U.S.C 2843) Enacted Apr. 11, 1965, P.L. 89-10, sec. 2, 79 Stat. 33; amended Nov. 3, 1966, P.L. 89-750, sec. 114, 80 Stat. 1197; redesignated and amended Jan. 2, 1968, P.L. 90-247, secs. 107(b), 110, 81 Stat. 785, 787; redesignated and amended Apr. 13, 1970, P.L. 91-230, sec. 113(b)(3), (4)(c) and (d), 84 Stat. 126, 129; amended Aug. 21, 1974, P.L. 93-380, sec. 101, 88 Stat. 498, 499; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2195, 2196.

PAYMENTS FOR STATE ADMINISTRATION

SEC. 194. (a) Except as provided in subsection (b), the Commissioner is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this title, except that the total of such payments in any fiscal year shall not exceed—

(1) 1 per centum of the amount allocated to the State and its local educational agencies and to other State agencies as determined for that year under this title; or

(2) $225,000, or $50,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands,

whichever is the greater, except that any amount paid by reason of clause (1) or (2) in excess of the limitations on such payments in effect prior to the effective date of the Education Amendments of 1978 shall be used exclusively for monitoring, audit resolution, enforcement, or similar compliance activities and shall supplement and not supplant funds otherwise available from non-Federal sources for such purposes.

(b) The provisions of this section shall apply in any fiscal year in which the provisions of section 510(b)(2) are not met.

(20 U.S.C 2844) Enacted Apr. 11, 1965, P.L. 89-10, sec. 2, 79 Stat. 32; amended Nov. 1, 1965, P.L. 89-313, sec. 7(a), 79 Stat. 1162; amended Nov. 3, 1966, P.L. 89-750, secs. 103(c)(2), 108(b)(3), 112, 113(a), 80 Stat. 1193, 1195, 1197; redesignated and amended Jan. 2, 1968, P.L. 90-247, secs. 102, 103(c), 108(a)(2), 110, 81 Stat. 783, 786, 787; redesignated and amended Apr. 13, 1970, P.L. 91-230, secs. 113(b)(3), (4), (8), 114, 84 Stat. 126, 129, 130; amended Oct. 12, 1976, P.L. 94-482, sec. 323(a)(1), 90 Stat. 2217; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2196; amended August 13, 1981, P.L. 97-35, sec. 554(d), 95 Stat. 556.

PART F—GENERAL PROVISIONS

LIMITATION ON GRANT TO PUERTO RICO

SEC. 197. Notwithstanding the provisions of part A or of subpart 1, 2, or 3 of part B of this title, the amount paid to the Commonwealth of Puerto Rico under this title for any fiscal year shall not exceed 150 per centum of the amount received by Puerto Rico under this title in the preceding fiscal year. Any excess over such amount shall be used to ratably increase the allocations under subpart 1 of part A of the other local educational agencies whose allocations do not exceed the maximum amount for which they are eligible under section 111.

(20 U.S.C. 2853) Enacted Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2198.

DEFINITIONS

Sec. 198. (a) Except as otherwise provided, for purposes of this title:

(1) The term "average daily attendance" means attendance determined in accordance with State law, except that notwithstanding any other provision of this title, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this title the attendance of such child at such school shall be held and considered (A) to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be in attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

(2) The term "average per pupil expenditure" means in the case of a State or the United States, the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies in the State, or in the United States (which for the purposes of this subsection means the fifty States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

(3) The term "Commissioner" means the United States Commissioner of Education.

(4) The term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

(5) The term "county" means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

(6) The term "current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance, and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under this title or parts B and C of title IV of this Act.

(7) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law, and the term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(8) The term "equipment" includes machinery, utilities, and building equipment and any necessary enclosure or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

(9) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade 12

(10) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(11) The term "parent" includes a legal guardian or other person standing in loco parentis.

(12) The term "project area" means a school attendance area having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a program or project assisted under this title.

(13) The term "school attendance area" means in relation to a particular school, the geographical area in which the children who are normally served by that school reside.

(14) The term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

(15) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(16) The term "State" means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(17) The term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(20 U.S.C. 2854) Enacted Sept. 30, 1950, C. 1124, P.L. 874, 81st Cong., Title III, sec. 303, formerly sec. 9, 64 Stat. 1108; amended Aug. 8, 1953, C. 402, P.L. 248, 83d Cong. sec. 10, 67 Stat. 536; amended Aug. 1, 1956, P.L. 896, 84th Cong., sec. 10, 70 Stat. 909; amended Aug. 3, 1956, C. 915, P.L. 949, 84th Cong., sec. 211, 70 Stat. 972; amended Aug. 12, 1958, P.L. 85-620, sec. 205, 72 Stat. 560; amended June 25, 1959, P.L. 86-70, sec. 18(d)(4), 73 Stat. 145; amended July 12, 1960, P.L. 86-624, sec. 14(d)(4), 74 Stat. 414; amended Oct. 16, 1964, P.L. 88-665, sec. 1102(b), 78 Stat. 1109; redesignated and amended April 11, 1965, P.L. 89-10, secs. 3(c)(1), 4(a)-(c), (d)(1), (e), 79 Stat. 35; amended Nov. 1, 1965, P.L. 89-313, sec. 6(c), 79 Stat. 1162; amended Nov. 3, 1966, P.L. 89-750, sec. 117(a)(1), (b) 80, Stat. 1198, 1199. sec. 206, 80 Stat. 1213; amended Jan. 2, 1968, P.L. 90-247, sec. 201, 81 Stat. 806; amended Apr. 13, 1970, P.L. 91-230, sec. 203(b), 84 Stat. 156. Amendments effective after June 30, 1970; redesignated June 23, 1972, P.L. 92-318, sec. 411, 86 Stat. 334; amended August 21, 1974, P.L. 93-380, sec. 304(d)(1), 88 Stat. 523; P.L. 93-380, sec. 101(a)(9)(K), 88 Stat. 501; amended April 21, 1976, P.L. 94-273, sec. 49(d), 90 Stat. 382; amended October 12, 1976, P.L. 94-482, sec. 501(n), 90 Stat. 2237, 2238; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 101(a), 92 Stat. 2198-2200.

APPENDIX B

Regulatory Requirements

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

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AUTHORITY: Secs. 552-559, 591-596 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801-3808, 3871-3876, unless otherwise noted.

SOURCE: 47 FR 52343, Nov. 19, 1982, unless otherwise noted.

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

GENERAL

§ 200.1 Purpose.

Under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), the Secretary provides financial assistance to local educational agencies (LEAs) for projects designed to meet the special educational needs of—

(a) Educationally deprived children selected in accordance with Section 556 of Chapter 1; and

(b) Children in local institutions for neglected or delinquent children.

(Authority: Sec. 552, 20 U.S.C. 3801; Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 200.2 Applicability of regulations in this part.

(a) The regulations in this part apply to projects for which the Secretary provides financial assistance to LEAs under Chapter 1.

(b) The regulations do not apply to Chapter 1 projects operated by State agencies for handicapped children, neglected or delinquent children, or migratory children of migratory agricultural workers or migratory fishermen.

(Authority: Secs. 552-558, 20 U.S.C. 3801-3807)

§ 200.3 Definitions.

(a) The definitions in Section 595 of the Education Consolidation and Improvement Act of 1981 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a), the following definitions apply to this part:

"Attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside. However, if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

"Chapter 1" means Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"Children" means persons—

(1) Up to age 21 who are entitled to a free public education not above grade 12; or

(2) Who are of preschool age.

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another twelve-month period normally used by the State educational agency (SEA) for recordkeeping.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated for the care of children who have been determined to be delinquent or in need of supervision.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility—other than a foster home—that is operated for the care of children who have been committed to the institution— or voluntarily placed in the institution under applicable State law—because of the abandonment by, neglect by, or death of parents.

"Preschool children" means children who are—

(1) Below the age and grade level at which the LEA provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Private," as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"Project area" means an attendance area in which a high concentration of children from low-income families reside, and that is selected by an LEA under Section 556(b) of Chapter 1, without regard to the locality of the project itself, as an area from which children are to be selected to participate in a Chapter 1 project.

"Public," as applied to an agency, organization, or institution, means under the administrative supervision or control of a government other than the Federal Government.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended.

(c) Additional definitions pertaining to the due process procedures in §§ 200.90–200.106 are contained in § 200.92 of these regulations.

(d) Any term used in the provisions of Title I referenced in Section 554 of Chapter 1 and not defined in Section 595 of Chapter 1 has the same meaning as that term was given in Title I.

(e) The definitions in 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) do not apply to programs covered by this part.

(Authority: Secs. 552-558; 20 U.S.C. 3801-3807; Sec. 595, 20 U.S.C. 3875)

§ 200.4 Amount of funds available for Chapter 1 grants.

(a) *Grants to SEAs.* The Secretary annually notifies an SEA of the amount of funds the SEA is eligible to receive for the next fiscal year for—

(1) Allocation to LEAs under paragraph (b) of this section; and

(2) State administration of Chapter 1 programs.

(b) *Grants to LEAs.* The SEA, on the basis of county allocations provided by the Secretary or, if necessary, on the basis of other data, shall annually—

(1) Determine, in accordance with §§ 200.21–200.23, 200.31, and .200.42, the amount of Chapter 1 funds that each LEA is eligible to receive under this part for the next fiscal year; and

(2) Notify each LEA of the amount determined under paragraph (b)(1) of this section.

(Authority: Sec. 554, 20 U.S.C. 3803)

[47 FR 52343, Nov. 19, 1982. Redesignated at 51 FR 18409, May 19, 1986]

EFFECTIVE DATE NOTE: Section 200.4 was redesignated from § 200.5 at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§§ 200.5–200.9 [Reserved]

APPLICATION PROCEDURE

§ 200.10 State assurances.

(a) A State that wishes to receive Chapter 1 funds for LEA projects designed to meet the special educational needs of educationally deprived children shall file with the Secretary assurances that meet the requirements in Section 435 (b)(2) and (b)(5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting procedures.

(b) When an SEA files the assurances required in paragraph (a) of this section, the assurances will remain in effect for the duration of the SEA's participation in Chapter 1.

(Authority: Sec. 596(a), 20 U.S.C. 3876(a))

§ 200.11 Payments for State administration.

The Secretary pays each State an amount to be spent by it for the proper and efficient performance of its duties under Chapter 1, provided that the amount paid by the Secretary for any fiscal year does not exceed the limits imposed by Section 554 (b) and (d) of Chapter 1.

(Authority: Sec. 554(b), 20 U.S.C. 3803(b); Sec. 554(d), 20 U.S.C. 3803(d))

§ 200.12 LEAs that may receive Chapter 1 funds.

An LEA that is eligible to receive funds for a fiscal year may receive those funds through a grant from the SEA, if the LEA has on file with the SEA a Chapter 1 project application that—

(a) Describes the projects to be conducted with the Chapter 1 funds; and

(b) Has been approved by the SEA.

(Authority: Sec. 556, 20 U.S.C. 3805)

§ 200.13 Submission of LEA project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit to the SEA an application for a Chapter 1 project to be conducted during a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The LEA's Chapter 1 project application must include—

(1) A description of the Chapter 1 project to be conducted;

(2) The assurances required under Section 556(b) of Chapter 1; and

(3) The assurances required by Section 436(b)(2) and (b)(3) of GEPA.

(c) *Annual updating of information in the Chapter 1 application.* An LEA shall annually update its Chapter 1 project application by submitting to its SEA—

(1) Data showing that the LEA has maintained its fiscal effort as required by Section 558(a) of Chapter 1; and

(2) A budget for the expenditure of Chapter 1 funds.

(d) *Further updating of information in the application.* When there are substantial changes in the number or needs of the children to be served or the services to be provided, the LEA shall submit a description of those changes to the SEA.

(Authority: Sec. 556, 20 U.S.C. 3805)

§ 200.14 SEA approval of applications.

(a) *Standards for approval.* An SEA shall approve an LEA's application for Chapter 1 funds, if that application meets the requirements in Section 556 of Chapter 1.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

(Authority: Sec. 556, 20 U.S.C. 3805)

§§ 200.15–200.19 [Reserved]

Subpart B—Allocation of Chapter 1 Funds for Grants to Local Educational Agencies

BASIC GRANTS

§ 200.20 Eligibility of LEAs for basic grants.

(a) Each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible for a basic Chapter 1 grant for a fiscal year if—

(1) The Secretary determines, on the basis of satisfactory available data, that there are at least 10 children counted under Section 111(c) of Title I (Children to be counted) in the school district of the LEA; or

(2) The Secretary does not have available satisfactory data on a school district basis, but the school district served by the LEA is located, in whole or in part, in a county in which the Secretary determines there are at least 10 children counted under Section 111(c) of Title I.

(b) The Secretary allocates funds appropriated for basic Chapter 1 grants among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands on the basis of their respective needs for Chapter 1 funds, and to the Secretary of the Interior for programs for Indian children.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.21 Determination by the Secretary of basic grants.

(a) If satisfactory census data by LEA are available from the Department of Commerce, the Secretary determines the amount of the basic Chapter 1 grant that each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible to receive for a fiscal year under the method in Sections 111(a)(2)(A) (relating to amounts when data are available) and 111(c) of Title I.

(b)(1) If satisfactory census data by LEA are not available from the Department of Commerce, the Secretary determines the county aggregate amount of basic Chapter 1 grant funds that all LEAs in a county are eligible to receive under the method in Sections 111(a)(2)(B) (relating to amounts when data by LEA are not available and 111(c) of Title I.

(2) The county aggregate amount referred to in paragraph (b)(1) of this section includes an amount based on the number of children aged 5 through 17 who—under the criteria in Section 111(c)(2)(B) of Title I (relating to determining numbers of children)—are living in institutions for neglected

or delinquent children, or being supported in foster homes with public funds, but who are not counted under Subpart 3 of Part B of Title I (Programs for neglected or delinquent children operated by State agencies) for purposes of a grant to a State agency.

(c) If the amount appropriated for basic grants for any fiscal year exceeds the amount appropriated for basic grants in fiscal year 1979, the Secretary—under Section 111(a)(3)(D) of Title I (relating to allocating amounts over the amounts available for fiscal year 1979)—allocates an amount equal to one-half of the excess amount to SEAs on the basis of data from the 1975 Survey of Income and Education conducted by the Bureau of the Census.

(d) If the funds appropriated by Congress for any fiscal year are not sufficient to pay the full amount that all LEAs are eligible to receive under basic Chapter 1 grants, the Secretary ratably reduces, using the procedures in Section 193 of Title I (Adjustments where necessitated by appropriations), the amount available to each LEA or county.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.22 Allocation of county aggregate amounts by SEAs.

Except as provided in § 200.23, an SEA shall allocate the county aggregate amounts, determined by the Secretary under § 200.21, by using the following procedures:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based—

(i) On the number of children, aged 5 through 17, in the LEA's district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of Part B of Title I (Programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one of which was in the month of October of the preceding fiscal year; or

(ii) On the most recent reliable data available at the time of the determination, if the data referred to in paragraph (a)(1)(i) of this section are not available before January of the calendar year in which the Secretary's determination under § 200.21 is made.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on children in local institutions for neglected or delinquent children; and

(ii) Assign that portion of the LEA's grant to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State or local public agency if that agency agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate that portion of the LEA's grant that is based on children in local institutions for neglected or delinquent children to any other agency.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect that transfer.

(b) *Allocations based on the distribution of children from low-income families.* (1) *General rule.* After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(2) *Special circumstances.* The SEA shall adjust the allocations that it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to that LEA from the county aggregate amount for each county in which that district is located provided the aggregate number of children in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children from the school district of another LEA or serves different children within the same geographical area as another LEA, the SEA may adjust the allocations of those LEAs, among them, in a manner that it determines will best carry out the purposes of Chapter 1.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA may—

(A) Adjust the allocations of those LEAs to reflect the number of children from low-income families for whom each remaining LEA is providing a free public education; or

(B) Permit an LEA that submitted a previously approved project application to carry out the approved project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(3) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of Chapter 1 funds generated by fewer than 10 children.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.23 Exceptions to county aggregate amounts.

In any State in which a large number of LEAs overlap county boundaries, the SEA may make allocations of basic grants and special incentive grants directly to LEAs without regard to counties, if such allocations were made during fiscal year 1982, except that—

(a) Precisely the same factors are to be used to determine the amount as were used to compute the county aggregate amount under § 200.21(b); and

(b) An LEA dissatisfied with the determination is to be afforded an opportunity for a hearing on the matter by the SEA.

(Authority: Sec. 558(e), 20 U.S.C. 3[illegible](e))

§§ 200.24-200.29 [Reserved]

SPECIAL INCENTIVE GRANTS

§ 200.30 Eligibility for special incentive grants.

(a) An LEA that is eligible to receive a basic Chapter 1 grant for any fiscal year shall be entitled to an additional grant under Section 116 of Title I (relating to special incentive grants) if the LEA is located in a State that has in effect for that fiscal year a State program that meets the requirements in Section 131(c) of Title I (which describes certain State and local compensatory education programs that are similar to Title I) and Section 116(a)(2)(B) of Title I (relating to the percentage of State funds expended in low-income areas).

(b)(1) An SEA that desires to have its LEAs be eligible to receive an additional grant shall develop a system for determining the eligibility data required by Section 116(b)(4) of Title I and the amount of State funds expended under the State program referred to in paragraph (a) of this section.

(2) Upon request, the SEA shall submit to the Secretary information on the system developed in paragraph (b)(1) of this section.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.31 Amount of special incentive grants.

The amount of special incentive grants which the LEAs in a State will receive for any fiscal year is determined under the procedures in Section 116(b) and (c) of Title I.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.32 Method of making special incentive grants.

The Secretary includes that amount of special incentive grant funds that a State will receive during a particular fiscal year in the amount of Chapter 1 funds paid to that State for that fiscal year.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.33 Use of special incentive grant funds.

An LEA that receives special incentive grant funds shall use those funds to carry out activities described in the approved project application for Chapter 1 funds that the LEA submits to the SEA under § 200.13.

(Authority: Sec. 554, 20 U.S.C. 3803)

§§ 200.34–200.39 [Reserved]

CONCENTRATION GRANTS

§ 200.40 States to receive concentration grant funds.

A State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under Chapter 1 for any fiscal year receives concentration grant funds from the amount of concentration grant funds available for that fiscal year.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.41 Determinations of State and county concentration grants.

(a) The Secretary determines the amount of concentration grant funds that each county and State is eligible to receive by using the procedures in Section 117 of Title I (relating to the amount of the concentration grant).

(b) Each State that receives concentration grant funds receives at least one-quarter of one percent of the total concentration grant funds available for the fiscal year.

(1) A county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of concentration grant funds is allocated the same proportion of the total concentration grant allocation as an eligible county that is located in a State that receives more than the minimum allocation. After each county has been allocated its proportionate share, the Secretary allocates to the SEA any concentration grant funds that remain unallocated.

(2) If no county in a State that receives the minimum allocation of concentration grant funds meets the statutory eligibility criteria, the Secretary allocates the total amount of the minimum allocation of concentration grant funds to the SEA.

(3) The SEAs that receive the minimum allocation of concentration grant funds may distribute the amount that has been allocated to the SEA under paragraphs (b) (1) and (2) of this section—

(i) Among only those counties that receive basic grants and have high concentrations of children from low-income families. The SEA shall use the best available data on the current distribution of children from low-income families for selecting these counties; or

(ii) Among all counties in the State that receive basic grant funds based on the total number of children counted in each county for purposes of the basic grant statutory formula under the criteria in Section 111(c) of Title I.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.42 Determination of LEA allocations.

(a) The SEA shall distribute concentration grant funds among the LEAs in each county that receives those funds in accordance with § 200.41, on the basis of the current distribution within each of those counties of children aged 5 through 17. In making this distribution, the SEA shall use either of the following procedures, as applicable:

(1) Each LEA in which 20 percent or more of the children are counted as being from low-income families under the Chapter 1 basic grant formula receives a portion of the county's concentration grant allocation based on the number of children counted under the basic grant formula.

(2) Each LEA in which less than 20 percent of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's concentration grant allocation based on (A) the number of children counted under the Chapter 1 basic grant formula multiplied by (B) a fraction in which the numerator is the percentage of children in the LEA that are counted under the basic grant formula and the denominator is 20.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.43 Method of awarding concentration grant funds.

The Secretary includes the amount of concentration grant funds that a State is entitled to receive during a particular fiscal year in the amount of Chapter 1 funds paid to that State for that fiscal year.

(Authority: Sec. 554, 20 U.S.C. 3803)

§ 200.44 Use of concentration grant funds.

An LEA that receives concentration grant funds shall use those funds to carry out activities that are described in an approved project application for Chapter 1 funds that the LEA submits to the SEA under § 200.13.

(Authority: Sec. 554, 20 U.S.C. 3803)

REALLOCATION

§ 200.45 Reallocation of chapter 1 funds by SEAs.

(a) During each fiscal year, an SEA shall—

(1) Determine which, if any, LEAs have received allocations of Chapter 1 funds that exceed the amount required to—

(i) Operate their Chapter 1 projects effectively during the curent fiscal year; and

(ii) Provide a prudent and justifiable reserve of Chapter 1 funds for operating their Chapter 1 projects effectively during the next fiscal year; and

(2) Notify each LEA identified under paragraph (a)(1) of this section of—

(i) The amount of that LEA's Chapter 1 funds that the SEA is considering reallocating to other LEAs under paragraph (b) of this section; and

(ii) The opportunity for that LEA to amend its Chapter 1 application to include approvable proposals for use of the excess funds.

(b)(1) If the LEA fails to amend properly its Chapter 1 application in response to the opportunity provided under paragraph (a) of this section, the SEA shall reallocate the excess Chapter 1 funds to LEAs that have the greatest need for such funds for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the allocation provisions in Section 111(a) of Title I as a result of factors like population shifts and changing economic circumstances.

(2) The SEA shall notify the Secretary of those reallocations.

(Authority: Sec. 554, 20 U.S.C 3803)

§ 200.46 Reallocation of Chapter 1 funds by the Secretary.

If excess amounts of Chapter 1 funds remain after an SEA has completed the process in § 200.45, the Secretary distributes those excess funds among other States on the basis of need.

(Authority: Sec. 554, 20 U.S.C. 3303)

§ 200.47–200.49 [Reserved]

Subpart C—Project Requirements

§ 200.50 Selection of school attendance areas.

(a) *General rule.* (1) Except as provided in paragraphs (b) and (c) of this section, an LEA that receives Chapter 1 funds shall operate Chapter 1 projects that are—

(i) Conducted in school attendance areas of the LEA having the highest concentrations of low-income children; or

(ii) Located in all school attendance areas of the LEA if the LEA has a uniformly high concentration of low-income children.

(2) To meet the requirement in paragraph (a)(1)(i) of this section, an LEA shall order its school attendance areas based on concentrations of children from low-income families and shall select areas for participation based on that ordering.

(b) *Special rules.* An LEA may implement the following provisions to meet the requirement in paragraph (a) of this section:

(1) Designate as eligible any school attendance area in which at least 25 percent of the children are from low-income families.

(2) Provide Chapter 1 services to educationally deprived children who are in a school which is not located in an eligible school attendance area if the proportion of children from low-income families in average daily attendance in that school is substantial-

ly equal to the proportion of those children in an eligible school attendance area of the LEA.

(3)(i) With the approval of the SEA, designate as eligible and serve school attendance areas or schools with substantially higher numbers or percentages of educationally deprived children before school attendance areas or schools with higher concentrations of children from low-income families, except that the LEA may not serve more school attendance areas or schools than could otherwise be served.

(ii) An SEA shall approve the selection of school attendance areas or schools under paragraph (b)(3)(i) of this section only if the SEA finds that the selection will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by the LEA.

(4)(i) Continue to provide Chapter 1 services in a school attendance area or school that does not qualify under paragraph (a) of this section if that area or school was selected under the standards in paragraph (a) of this section in either of the two preceding fiscal years.

(ii) A school attendance area or school may receive a single additional year of eligibility for each of the two preceding fiscal years for which it was selected under paragraph (a) of this section. Thus, the eligibility conferred by paragraph (b)(4)(i) of this section can be valid for a total of two years.

(5) With the approval of the SEA, skip eligible school attendance areas or schools which have higher proportions of children from low-income families if the children in those areas or schools are receiving from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1, except that the LEA shall—

(i) Determine the number of children in private schools to receive Chapter 1 services without regard to non-Federal compensatory education funds used to serve eligible children in public elementary and secondary schools; and

(ii) Identify children in private schools to receive Chapter 1 services in accordance with the provisions in paragraphs (a) and (b)(1) through (4) of this section.

(c) *Exemption.* An LEA with a total enrollment of fewer than 1,000 children does not have to comply with the requirements in this section but shall comply with the requirements in § 200.51.

(See 556(b)(1), (c), (d)(1)-(5), 20 U.S.C. 3805(b)(1), (c), (d)(1)-(5); H. Rept. 98th Cong., 1st Sess. 2, 4 (1983); S. Rept. 166, 98th Cong., 1st Sess. 2, 9 (1983))

[51 FR 18409, May 19, 1986]

EFFECTIVE DATE NOTE: Section 200.50 was redesignated from § 200.49 and revised at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments". For the convenience of the user, the superseded text is set forth as follows:

§ 200.49 *Selection of attendance areas.*

An LEA that receives Chapter 1 funds shall operate Chapter 1 projects that are—

(a) Conducted in attendance areas of the LEA having the highest concentrations of low-income children;

(b) Located in all attendance areas of the LEA if the LEA has a uniformly high concentration of low-income children; or

(c) Designed to utilize part of the Chapter 1 funds for services that promise to provide significant help for all educationally deprived, low-income children served by the LEA.

(Authority: Sec. 556(b)(1), 20 U.S.C. 3805(b)(1))

§ 200.51 Student identification and selection.

(a) *Annual assessment of educational needs.* An LEA that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs that—

(1) Identifies educationally deprived children in all eligible school attendance areas or schools, including educationally deprived children in private schools;

(2) Requires, among the educationally deprived children selected, inclusion of those children who have the greatest need for special assistance; and

(3) Determines the educational needs of the children selected to par-

ticipate with sufficient specificity to ensure concentration on those needs.

(b) *Special rules.* (1) If, in complying with paragraph (a)(2) of this section, an LEA chooses to serve only children in greatest need for special assistance, the LEA may use Chapter 1 funds to serve, for one additional school year, children who, in any previous year, were identified as being in greatest need for special assistance, and who continue to be educationally deprived, but who are no longer identified as being in greatest need for special assistance.

(2) An LEA may use Chapter 1 funds during the current school year to continue to serve educationally deprived children who begin participation in a Chapter 1 project but who, in the same school year, are transferred to a school attendance area or a school not receiving Chapter 1 funds.

(3)(i) Except as provided in paragraph (b)(3)(ii) of this section, an LEA is not required to use Chapter 1 funds to serve educationally deprived children in greatest need for special assistance if those children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under Chapter 1.

(ii) The LEA shall serve children who are in greatest need for special assistance who are not receiving services of the same nature and scope from non-Federal sources.

(Sec. 556(b)(2), (c), (d)(6)-(8), 20 U.S.C. 3805 (b)(2), (c), (d)(6)-(8); H. Rept. 51, 98th Cong., 1st Sess. 2, 4-5 (1983); S. Rept. 166, 98th Cong., 1st Sess. 2, 8-9 (1983); H. Rept. 574, 98th Cong., 1st Sess. 12(1983))

[51 FR 18410, May 19, 1986]

EFFECTIVE DATE NOTE: Section 200.51 was redesignated from § 200.50 and revised at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments". For the convenience of the user, the superseded text is set forth as follows:

§ 200.50 Annual needs assessment.

An LEA that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs that—

(a) Identifies educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools;

(b) Permits the selection of those educationally deprived children in the greatest need of special assistance; and

(c) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Authority: Sec. 556(b)(2); 20 U.S.C. 3805(b)(2))

§ 200.52 Prohibition against using chapter 1 funds to provide general aid.

An LEA may use chapter 1 funds only for projects that are designed and implemented to meet the special educational needs of educationally deprived children, identified in accordance with Section 556(b)(2) of Chapter 1, and who are included in an application for assistance approved by the SEA.

(Authority: Sec. 552, 20 U.S.C. 3801; Sec. 555(c), 20 U.S.C. 3804(c); Sec. 556(b)(2), 20 U.S.C. 3805(b)(2))

§ 200.53 Consultation with parents and teachers.

(a) An LEA that receives Chapter 1 funds shall design and implement its Chapter 1 project in consultation with parents and teachers of the children being served, including parents and teachers of children in private schools.

(b)(1) To meet the consultation requirement in paragraph (a) of this section, an LEA shall develop written policies to ensure that parents of the children being served have an adequate opportunity to participate in the design and implementation of the LEA's Chapter 1 project.

(2) Activities an LEA may consider in developing the policies required in paragraph (b)(1) of this section include, but are not limited to, the following:

(i) Notifying each child's parents in a timely manner that the child has been selected to participate in Chapter 1 and why the child has been selected.

(ii) Informing each child's parents of the specific instructional objectives for the child.

(iii) Reporting to each child's parents on the child's progress.

(iv) Establishing conferences between individual parents and teachers.

(v) Providing materials and suggestions to parents to help them promote the education of their children at home.

(vi) Training parents to promote the education of their children at home.

(vii) Providing timely information concerning the Chapter 1 program including, for example, program plans and evaluations.

(viii) Soliciting parents' suggestions in the planning, development, and operation of the program.

(ix) Consulting with parents about how the school can work with parents to achieve the program's objectives.

(x) Providing timely responses to parents' recommendations.

(xi) Facilitating volunteer or paid participation by parents in school activities.

(xii) Designating LEA parent coordinators.

(xiii) Establishing parent advisory councils.

(Authority: Sec. 556(b)(3), 20 U.S.C. 3805(b)(3); 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

[47 FR 52343, Nov. 19, 1982, as amended at 51 FR 18410, May 19, 1986]

EFFECTIVE DATE NOTE: Section 200.53 was amended by revising paragraph (b) at 51 FR 18410, May 19, 1986, and becomes effective "after the information collection requirements have been submitted to and approved by the Office of Management and Budget". For the convenience of the user, the superseded text is set forth as follows:

§ 200.53 Consultation with parents and teachers.

* * * * *

(b) To meet the consultation requirement in paragraph (a) of this section, an LEA may, but is not required to, establish and use parent advisory councils.

§ 200.54 Schoolwide projects.

(a) *Eligibility of a school for a schoolwide project.* An LEA may conduct a Chapter 1 project to upgrade the entire educational program in a school if—

(1) The school serves an eligible school attendance area;

(2) At least 75 percent of the children at the school are from low-income families;

(3) The LEA develops for the school a plan that meets the requirements in paragraph (b) of this section and has been approved by the SEA; and

(4) The LEA meets the financial requirements in paragraph (c) of this section.

(b) *Required plan for each school selected for a schoolwide project.* The plan referred to in paragraph (a)(3) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children;

(2) Provide for an instructional program designed to meet the special needs of all students in the school;

(3) Be developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, teacher aides, administrators, and secondary students if the plan relates to a secondary school;

(4) Provide for consultation among the individuals referred to in paragraph (b)(3) of this section concerning the educational progress of all students in the school;

(5) Provide for appropriate training for teachers and teacher aides to enable them to carry out the plan effectively;

(6) Include procedures that the LEA will use to evaluate the effectiveness of the schoolwide project and that will involve in the evaluation the participation of the individuals referred to in paragraph (d)(3) of this section; and

(7) Include opportunities for periodic improvements in the plan based on the results of the evaluations referred to in paragraph (b)(6) of this section.

(c) *Financial requirements for a schoolwide project.* An LEA that uses Chapter 1 funds to conduct a schoolwide project shall meet the following financial requirements:

(1) In each school selected for a schoolwide project, the LEA shall provide, per educationally deprived child served in that school, an amount of Chapter 1 funds that is at least equal to the amount of Chapter 1 funds that the LEA provides per educationally deprived child served in other schools, if any, that serve project areas.

(2) In each school selected for a schoolwide project, the LEA shall pro-

vide, per child served by the schoolwide project who is not educationally deprived, an amount of special supplementary State and local funds that is at least equal to the amount of Chapter 1 funds that the LEA provides per educationally deprived child served in that school.

(3) During the fiscal year in which the plan required by paragraph (a)(3) of this section is carried out, the LEA shall, in each school selected for a schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a State compensatory education program—that is at least equal to the amount of State and local funds that the LEA spent per child in that school during the preceding fiscal year.

(4) In order to meet the requirements in section 558(b) of Chapter 1, each school that is selected for a schoolwide project must receive all non-Federal funds that it would have received had it not been selected for a schoolwide project.

(d) *Effect of selection of a school for a schoolwide project.* For each school that has been selected for a schoolwide project, the LEA is not required to—

(1) Comply with any requirements under Chapter 1 concerning the commingling of Chapter 1 funds with funds available for regular programs;

(2) Comply with the requirements in § 200.51 concerning identification and selection of children to participate in Chapter 1 projects; or

(3) Demonstrate that the services provided with Chapter 1 funds are supplementary to the services regularly provided in the school. (However, see paragraph (c)(4) of this section, which requires that Chapter 1 funds supplement the amount of non-Federal funds that are provided to the school.)

(Sec. 556(d)(9), 20 U.S.C. 3805(d)(9); H. Rept. 51, 98th Cong., 1st Sess. 2, 4–5 (1983); S. Rept. 166, 98th Cong., 1st Sess. 2, 9–10 (1983))

[51 FR 18410, May 19, 1986]

EFFECTIVE DATE NOTE: Section 200.54 was removed and a new section added at 51 FR 18410, May 19, 1986, and becomes effective "after the information collection requirements have been submitted to and approved by the Office of Management and Budget." For the convenience of the user, the old section is set forth as follows:

§ 200.54 Evaluation.

An LEA that receives Chapter 1 funds shall, at least once every three years, evaluate its Chapter 1 project in terms of its effectiveness in achieving the goals set for it. This evaluation must include—

(a) Objective measurements of educational achievement in basic skills; and

(b) A determination of whether improved performance is sustained over a period of more than one year.

(Authority: Sec. 556(b)(4), 20 U.S.C. 3805(b)(4))

§§ 200.55–200.59 [Reserved]

§ 200.55 Allowable costs.

(a) An LEA may use Chapter 1 funds only to meet the costs of project activities that—

(1) Are designed to meet the special educational needs of educationally deprived children identified under Section 556(b)(2) of Chapter 1;

(2) Are included in an application approved by an SEA under § 200.14; and

(3) Comply with all applicable Chapter 1 requirements, including the assurances required under Section 556(b) of Chapter 1.

(b) The project activities referred to in paragraph (a) of this section may include the activities in Section 555(c) of Chapter 1.

(Authority: Sec. 555(c), 20 U.S.C. 3804(c))

EFFECTIVE DATE NOTE: Section 200.55 was removed at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§ 200.59 SEA rulemaking and other responsibilities.

(a) *General responsibilities of an SEA.* An SEA is responsible for ensuring that its LEAs comply with all applicable statutory and regulatory provisions pertaining to Chapter 1.

(b) *SEA rulemaking.* To carry out its responsibilities, an SEA may, in accordance with State law, adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 1 funds, provided that those rules, regulations, procedures, guidelines, and criteria do not conflict with the provisions of—

(1) Chapter 1;

(2) The regulations in this part; or

(3) other applicable Federal statutes and regulations.

(Authority: Sec. 556, 20 U.S.C. 3805; Sec 591, 20 U.S.C. 3871)

EFFECTIVE DATE NOTE: Section 200.59 was removed at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

Subpart D—Fiscal Requirements

§ 200.60 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 200.61, an LEA may receive its allocation of funds under Chapter 1 for any fiscal year only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, "preceding fiscal year" means the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

Example. For funds first made available on July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1981.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort and a waiver under § 200.61 is not appropriate, the SEA shall reduce the LEA's allocation of funds under Chapter 1 in the exact proportion to which the LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example. In fiscal year 1983, an LEA fails to maintain effort because its fiscal effort in 1981 is less than 90 percent of its fiscal effort in 1980; then, in the following fiscal year (1984), the LEA's fiscal effort in the second preceding year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Authority: Sec. 558(a), 20 U.S.C. 3807(a))

EFFECTIVE DATE NOTE: Section 200.60 was removed at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§ 200.60 Comparability of services.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, an LEA may receive Chapter 1 funds only if it uses State and local funds to provide services in project areas that, taken as a whole, are at least comparable to services being provided in school attendance areas that are not receiving Chapter 1 funds.

(b) Except as provided in paragraphs (c) and (d) of this section, if an LEA selects all its school attendance areas as project areas, the LEA may receive Chapter 1 funds only if it uses State and local funds to provide services that, taken as a whole, are substantially comparable in each project area.

(c) Unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year shall not be included as a factor in determining compliance with the comparability of services requirements in paragraphs (a) and (b) of this section.

(d) An LEA may exclude, for the purpose of determining compliance with the comparability requirements in paragraphs (a) and (b) of this section, State and local funds spent in carrying out the following types of programs:

(1) Special programs to meet the educational needs of educationally deprived children, including compensatory education programs for educationally deprived children, that meet the following requirements:

(i) All children participating in the program are educationally deprived.

(ii) The program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives.

(iii) The program provides supplementary services designed to meet the special educational needs of the children who are participating.

(iv) The LEA keeps records, and affords access to those records, as are necessary to ensure the correctness and verification of the requirements in paragraph (d)(1) (i)–(iii) of this section.

(v) The SEA monitors performance under the program to ensure that the requirements of paragraph (d)(1) (i)–(iv) of this section are met.

(2) Bilingual education programs for children of limited English proficiency.

(3) Special education programs for handicapped children or children with specific learning disabilities.

(4) State phase-in programs that meet the following requirements:

(i) The program is authorized and governed specifically by the provisions of State law.

(ii) The purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school.

(iii) The program is based on objectives including, but not limited to, performance objectives related to educational achievement, and is evaluated in a manner consistent with those objectives.

(iv) Parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program.

(v) The program will benefit all children in a particular school or grade-span within a school.

(vi) Schools participating in the program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children.

(vii) The phase-in period of the program is not more than six school years.

(viii) At all times during the phase-in period at least 50 percent of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families.

(ix) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in the program.

(x) The LEA is separately accountable, for purposes of compliance with paragraph (d)(4)(i) through (vi), (viii), and (ix) of this section, the SEA for any funds expended for the program.

(xi) The LEAs carrying out the program are complying with paragraph (d)(4)(i) through (vi), (viii), and (ix) and the SEA is complying with paragraph (d)(4)(x) of this section.

(e) An LEA shall be deemed to have met the comparability requirements in paragraphs (a) and (b) of this section if it has filed with the SEA a written assurance that it has established—

(1) A districtwide salary schedule;

(2) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(3) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

(Authority: Sec. 558(c), 20 U.S.C. 3807(c); Sec. 558(d), 20 U.S.C. 3807(d))

[47 FR 52343, Nov. 19, 1982. Redesignated and amended at 51 FR 18411, May 19, 1986]

EFFECTIVE DATE NOTE: Section 200.63 was redesignated as § 200.60 and paragraph (d) was revised at 51 FR 18411, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments". For the convenience of the user, the superseded text of paragraph (d) is set forth as follows:

§200.53 Comparability of services.

* * * * *

(d) An LEA may exclude, for the purpose of determining compliance with the comparability requirements in paragraphs (a) and (b) of this section, State and local funds spent in carrying out special programs to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

* * * * *

§ 200.61 Waiver of the maintenance of effort requirement.

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement in § 200.60 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the LEA; or

(iii) Other exceptional or uncontrollable circumstances.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of Chapter 1 funds the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example. An LEA secures a waiver because its fiscal effort in the preceding fiscal year (1981) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980) due to exceptional or uncontrollable circumstances; then, in the following fiscal year, the LEA's fiscal effort in the second preceding fiscal year (1981) would be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Authority: Sec. 558(a)(3), 20 U.S.C. 3807(a)(3); 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

EFFECTIVE DATE NOTE: Section 200.61 was removed at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§ 200.62 Supplement, not supplant.

(a) Except as provided in paragraph (b) of this section, an LEA may use Chapter 1 funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of Chapter 1 funds, be made available for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant those non-Federal funds.

(b) An LEA may exclude, for the purpose of determining compliance with the supplement, not supplant requirement in paragraph (a) of this section, State and local funds spent in carrying out special programs to meet the special educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

(c) In order to demonstrate compliance with the supplement, not supplant requirement in paragraph (a) of this section, an LEA shall not be required to provide Chapter 1 services outside the regular classroom or school program.

(Authority: Sec. 558(b), 20 U.S.C. 3807(b); Sec. 558(d), 20 U.S.C. 3807(d))

EFFECTIVE DATE NOTE: Section 200.62 was removed at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§§ 200.63–200.69 [Reserved]

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

GENERAL

§ 200.70 Responsibility of LEAs.

(a)(1) In consultation with private school officials, an LEA shall provide educationally deprived children residing in a project area of the LEA who are enrolled in private elementary and secondary schools with special educational services and arrangements as will assure participation on an equitable basis of those children in accordance with the requirements in §§200.70–200.75 and Section 557(a) of Chapter 1.

(2) If the LEA decides to serve educationally deprived, low-income children under Section 556(b)(1)(C) of Chapter 1, the LEA shall also provide Chapter 1 services to educationally deprived, low-income children in private schools as will assure participation on an equitable basis of those children in accordance with the requirements in §§ 200.70–200.75 and Section 557(a) of Chapter 1.

(b) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(c) The LEA shall exercise administrative direction and control over Chapter 1 funds and property that benefit educationally deprived children in private schools.

(d)(1) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency or corporation who or which, in the provision of those services, is independent of the private school and of any religious organizations.

(2) This employment or contract must be under the control and supervision of the public agency.

(e) In its application for Chapter 1 funds, the LEA shall make provision for services to educationally deprived children attending private elementary and secondary schools.

(Authority: Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(5), 20 U.S.C. 3805(b)(5); Sec. 557(a), 20 U.S.C. 3806(a); Sec. 591(a), 20 U.S.C. 3871(a); Sec. 596(a), 20 U.S.C. 3876(a))

§ 200.71 Factors used in determining equitable participation.

(a) *Equal expenditures.* Expenditures for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the LEA.

(b) *Services on an equitable basis.* The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

(Authority: Sec. 557(a), 20 U.S.C. 3806(a); Sec. 556(b)(3), 20 U.S.C. 3806(b)(3))

§ 200.72 Funds not to benefit a private school.

(a) An LEA shall use Chapter 1 funds to provide services that supplement the level of services that would, in the absence of Chapter 1 services, be available to children in private schools.

(b) An LEA shall use Chapter 1 funds to meet the special educational needs of children in private schools, but not for—

(1) The needs of the private schools; or

(2) The general needs of the children in the private schools.

(Authority: Sec. 557(a), 20 U.S.C. 3806(a))

§ 200.73 Use of public school employees.

An LEA may use Chapter 1 funds to make public employees available in other than public facilities—

(a) To the extent necessary to provide equitable Chapter 1 services designed for children in a private school; and

(b) If those services are not normally provided by the private school.

(Authority: Sec. 557(a), 20 U.S.C. 3806(a))

§ 200.74 Equipment and supplies.

(a) To meet the requirements of Section 557(a) of Chapter 1, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 1 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Authority: Sec. 557(a), 20 U.S.C. 3806(a); Sec. 586(a), 20 U.S.C. 3876(a))

§ 200.75 Construction.

No Chapter 1 funds may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: Sec. 557(a), 20 U.S.C. 3806(a))

§§ 200.76–200.79 [Reserved]

PROCEDURES FOR BYPASS

§ 200.80 Bypass—General.

(a) The Secretary implements a bypass if an LEA—

(1) Is prohibited by law from providing Chapter 1 services for private school children on an equitable basis; or

(2) Has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools.

(b) If the Secretary implements a bypass, the Secretary waives the LEA's responsibility for providing Chapter 1 services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the Chapter 1 services for private school children under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allocations of Chapter 1 funds provided to the affected LEA and SEA. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected LEA or SEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Authority: Sec. 557(b), 20 U.S.C. 3806(b))

[47 FR 52343, Nov. 19, 1982, as amended at 51 FR 18411, May 19, 1986]

Effective Date Note: Section 200.80 was amended by adding paragraph (c) at 51 FR 18411, May 19, 1986, effective "either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments".

§ 200.81 Notice by the Secretary.

(a) Before taking any final action to implement a bypass, the Secretary provides the affected LEA and SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the LEA and SEA to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the LEA and SEA that they have at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and may request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the LEA and SEA by certified mail with return receipt requested.

(Authority: Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.82 Bypass procedures.

Sections 200.83-200.85 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(Authority: Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.83 Appointment and functions of a hearing officer.

(a) If an LEA or SEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery, or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the LEA, SEA, and representatives of the private school children of the time and place of the hearing.

(Authority: Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.84 Hearing procedures.

(a) At the hearing, a transcript is taken. The LEA, SEA, and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the LEA, SEA, representatives of the private school children, or Department of Education officials.

(Authority: Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.85 Post hearing procedures.

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the LEA, SEA, representatives of the private school children, and the Secretary.

(b) The LEA, SEA, and representatives of the private school children each may submit written comments on the decision to the Secretary within 30 days from the receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(Authority: Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.86 Judicial review of bypass actions.

If an SEA or LEA is dissatisfied with the Secretary's final action after a proceeding under §§ 200.82-200.85, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located.

(Authority: Sec. 557(b)(4)(B), 20 U.S.C. 3806(b)(4)(B))

[51 FR 18411, May 19, 1986]

EFFECTIVE DATE NOTE: Section 200.86 was added at 51 FR 18411, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§ 200.87 Continuation of the bypass.

Any bypass action by the Secretary continues in effect until the Secretary determines that there will no longer be any failure or inability on the part of the LEA that is being bypassed to meet the requirements in §§ 200.70-200.75.

(Authority: Sec. 557(b)(3)(C), 20 U.S.C. 3806(b)(3)(C))

[51 FR 18412, May 19, 1986]

EFFECTIVE DATE NOTE: Section 200.87 was added at 51 FR 18412, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§§ 200.88—200.89 [Reserved]

OTHER DUE PROCESS PROCEDURES

§ 200.90 Eligibility for review.

Review under these regulations is available to a recipient of Chapter 1 funds that receives a written notice from an authorized Department official of—

(a) A final audit determination;

(b) An intent to withhold funds; or

(c) A cease and desist complaint.

(Authority: Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

EFFECTIVE DATE NOTE: Section 200.93 was removed at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§ 200.100 Practice and procedure.

(a) Practice and procedure before the Board in a proceeding for review of a final audit determination or a cease and desist complaint are governed by the rules in Subpart E of 34 CFR Part 78.

(b) Practice and procedure before the Board in a withholding hearing are governed by the procedures in the Administrative Procedure Act, 5 U.S.C. 554 and 556.

(Authority: Sec. 592(a), 20 U.S.C. 3872(a); sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

EFFECTIVE DATE NOTE: Section 200.100 was removed at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

§ 200.103 The Secretary's decision.

(a) The Panel's decision in § 200.101 becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the Panel and to each party.

(d) The final decision of the Secretary is the final decision of the Department.

(Authority: Sec. 592(a), 20 U.S.C. 3872(a); sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

EFFECTIVE DATE NOTE: Section 200.103 was removed at 51 FR 18409, May 19, 1986, effective "either 45 days after publication in the FEDERAL REGISTER or later if the Congress takes certain adjournments".

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